HAITI: HUMAN RIGHTS AND POLICE ISSUES

Y 4. IN 8/16:H 12/4

Haiti: Human Rights and Police Issu...

## HEARING

BEFORE THE

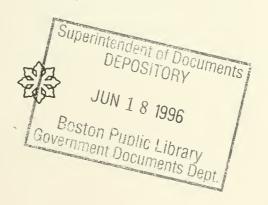
# COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

**JANUARY 4, 1996** 

Printed for the use of the Committee on International Relations



U.S. GOVERNMENT PRINTING OFFICE

23-559 CC

WASHINGTON: 1996



## HAITI: HUMAN RIGHTS AND POLICE ISSUES

Y 4. IN 8/16: H 12/4

Haiti: Human Rights and Police Issu...

## HEARING

BEFORE THE

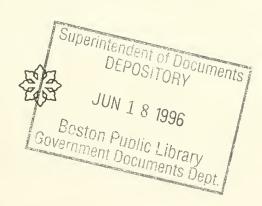
# COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

**JANUARY 4, 1996** 

Printed for the use of the Committee on International Relations



U.S. GOVERNMENT PRINTING OFFICE

23-559 CC

WASHINGTON: 1996

#### COMMITTEE ON INTERNATIONAL RELATIONS

BENJAMIN A. GILMAN, New York, Chairman

WILLIAM F. GOODLING, Pennsylvania JAMES A. LEACH, Iowa TOBY ROTH, Wisconsin HENRY J. HYDE, Illinois DOUG BEREUTER, Nebraska CHRISTOPHER H. SMITH, New Jersey DAN BURTON, Indiana JAN MEYERS, Kansas ELTON GALLEGLY, California ILEANA ROS-LEHTINEN, Florida CASS BALLENGER, North Carolina DANA ROHRABACHER, California DONALD A. MANZULLO, Illinois EDWARD R. ROYCE, California PETER T. KING, New York JAY KIM, California SAM BROWNBACK, Kansas DAVID FUNDERBURK, North Carolina STEVEN J. CHABOT, Ohio MARSHALL "MARK" SANFORD, South Carolina

LEE H. HAMILTON, Indiana SAM GEJDENSON, Connecticut TOM LANTOS, California ROBERT G. TORRICELLI, New Jersey HOWARD L. BERMAN, California GARY L. ACKERMAN, New York HARRY JOHNSTON, Florida ELIOT L. ENGEL, New York ENI F.H. FALEOMAVAEGA, American Samoa MATTHEW G. MARTINEZ, California DONALD M. PAYNE, New Jersey ROBERT E. ANDREWS, New Jersey ROBERT MENENDEZ, New Jersey SHERROD BROWN, Ohio CYNTHIA A. MCKINNEY, Georgia

ALCEE L. HASTINGS, Florida ALBERT RUSSELL WYNN, Maryland

MICHAEL R. MCNULTY, New York JAMES P. MORAN, Virginia

VICTOR O. FRAZER, Virgin Islands (Ind.)

MATT SALMON, Arizona AMO HOUGHTON, New York

> RICHARD J. GARON, Chief of Staff MICHAEL H. VAN DUSEN, Democratic Chief of Staff ROGER NORIEGA, Professional Staff Member PARKER H. BRENT, Staff Associate

## CONTENTS

### WITNESSES

	Page
Robert S. Gelbard, Assistant Secretary of State for International Narcotics and Legal Affairs, Department of State	8
James F. Dobbins, Special Haiti Coordinator, Department of State	12
William E. Perry, Deputy Assistant Director, Federal Bureau of Investigation Seth P. Waxman, Associate Deputy Attorney General, Department of Jus-	15
tice	17
APPENDIX	
Prepared statements:	
Robert S. Gelbard	61
James F. Dobbins	70
William Perry	74
Congressman Dan Burton	83
Letters dated January 3, 1996, to Chairman Benjamin A. Gilman from Wendy Sherman, Assistant Secretary for Legislative Affairs, Depart- ment of State	85
Letter dated July 11, 1995, to President Jean-Bertrand Aristide, Presi-	00
dent of the Republic of Haiti from William Lacy Swing, U.S. Ambas-	
sador to Haiti	95
Letter dated March 22, 1995, to Jean Joseph Exume, Minister of Justice,	
Republic of Haiti from George Fisher, Major General, U.S. Army	99
Letter dated March 31, 1995, to Senator Jesse Helms from Jean Bertin	101
Letters dated January 15, 1996, to Administration witnesses from Chair-	102
man Benjamin A. Gilman	102
Department of State	109
Federal Bureau of Investigation	125
Department of Justice	107
Additional information provided by the Department of Justice	139



### HAITI: HUMAN RIGHTS AND POLICE ISSUES

#### THURSDAY, JANUARY 4, 1996

House of Representatives, Committee on International Relations, Washington, DC.

The committee met, pursuant to call, at 10:05 a.m., in room 2172, Rayburn House Office Building, Hon. Benjamin A. Gilman (chairman of the committee) presiding.

Chairman GILMAN. The committee will come to order.

The first order of business today before we begin our hearing is to welcome the newest member of our committee, Mr. Tom Campbell of California. He is a distinguished former Member, recently returned to this House to fill the seat vacated by the resignation of our former colleague, the gentleman from California, Mr. Mineta.

Congressman Campbell has most recently served in the California State Senate and as a professor of law at Stanford University. Before service in the House, he served with the Federal Trade Commission, he was a White House fellow, a lawyer in private practice, and as a former clerk to Supreme Court Justice Byron White.

Mr. Campbell holds a J.D. from Harvard Law School, for which we will forgive him, and a B.A. and a Ph.D., all in economics, from the University of Chicago.

We warmly welcome you to our committee, Mr. Campbell.

Mr. HAMILTON. Will the gentleman yield?

Chairman GILMAN. I will be pleased to yield to the Ranking Mi-

nority Member, Mr. Hamilton.

Mr. HAMILTON. Let me join with the chairman in welcoming Mr. Campbell to the committee. He served in the Congress with very great distinction previously. We are delighted to have him back, and especially pleased to have him on this committee. That is quite a resumé he has. He is going to increase the intellectual level of this committee quite a lot.

We are glad to have you, Tom, and welcome to the committee.

Chairman GILMAN. Mr. Roth.

Mr. ROTH. I would like to join you and the Ranking Member in welcoming Mr. Campbell. I have known him and worked with him on the Banking Committee, and I am pleased to see he is again going to sit on both the Banking Committee and on this committee. It is a great delight to have Tom back. We are looking forward to the questions that he has for our witnesses, too.

Chairman GILMAN. Thank you, Mr. Roth. Are there other members seeking recognition?

Mrs. MEYERS. I would like to add my words to those of our committee members and say how pleased we are to have Tom with us on the committee.

Mr. HAMILTON. Mr. Chairman, is it my understanding that there

will be an additional Democratic slot open?

Chairman GILMAN. We are taking that under consideration and working on that at the present time.

Mr. CAMPBELL. Mr. Chairman. Chairman GILMAN. Mr. Campbell.

Mr. CAMPBELL. To respond to your gracious words and those of the Ranking Member and my colleagues, thank you. It is an honor to be back in the Congress and particularly to serve on this committee of such distinguished leadership. I look forward to our time together.

Chairman GILMAN. Thank you, Mr. Campbell.

The hearing on human rights and police issues in Haiti will now

come to order.

Without question, the human rights situation in Haiti has significantly improved since the U.S. intervention in September 1994. Administration witnesses have emphasized that point repeatedly, and it is anticipated that it will be reiterated once again this morning.

Even so, there has been a distressing pattern of violence involving an estimated 20 political killings since our nation's intervention. Most of those victims have been opponents of President Jean-

Bertrand Aristide.

The FBI has been asked to investigate the killing of attorney Mireille Bertin, a strong opponent of Mr. Aristide, who was shot dead in broad daylight in Port-au-Prince March 28, 1995. We have been informed that there is evidence connecting the Bertin killing with the murders of other Aristide opponents.

We are concerned, too, whether a conspiracy exists among some Haitians to eliminate President Aristide's opponents and whether

they were trying to hide this from the FBI.

There is some question whether we are being negative by focusing on what may appear to be a relatively small number of human rights violations in Haiti. Others contend that the presence of 6,000 U.N. peacekeepers and a \$2 billion intervention have prevented

temporarily much worse political violence.

Actually, this hearing is less about Haiti and more about the responsibility of our State Department to adequately and accurately respond to congressional queries on the critical issues pertaining to our relationship with Haiti. It is not enough to state that President Aristide, whom the Administration restored to power at great expense, is doing better than the authoritarian military junta which we threw out. The American people have a right to expect more from this kind of a policy, and the Congress needs full, accurate, and timely information on which to base its own actions.

This morning we are seeking answers to some of the following

questions:

Did the Haitian Government obstruct the FBI's investigation into

the murder of Mireille Bertin?

What have been the results of the FBI's investigation and the Haitian Government's investigation?

Does our executive branch have any information implicating senior officials of the Haitian Government in any of these murders in Haiti?

What steps did the State Department take to ensure that the Haitian Government cooperated fully with the FBI investigation?

When and to what extent did the State Department inform our committee, which has oversight responsibility over the Department and the conduct of U.S. foreign policy, about the political murders in Haiti?

What steps have been taken to ensure the integrity of the U.S.-

trained Haitian National Police?

I know my colleagues have many additional questions. Let me emphasize that while we are focusing on killings that have oc-curred since U.S. intervention in Haiti, Haiti will never be at peace until justice is served in the hundreds of cases of abuse that oc-curred during the prior military rule. The Clinton administration must continue to support efforts by Haiti's Truth Commission to resolve those cases as well.

Before proceeding further, do any of my colleagues have opening

remarks?

Mr. Hamilton? Mr. Roth?

Mr. ROTH. Mr. Chairman, I want to congratulate you for holding this hearing. I think it is time that we get some forthright answers

to what is happening in Haiti.

We have been briefed that traditionally Haiti has been a violent society and that assassination and death squads have permeated that country. Some officials want us to believe that all that has changed, but I think it is important for us to find out whether it really has changed.

Committee staff has learned from FBI briefings and from reading over 80 State Department cables that the situation in Haiti may not have changed. I think it is very important for this committee

to find the truth.

Is there reason to believe that political assassination is still alive and well in Haiti? Do the death squads still operate? And possibly even more disturbing, is there reason to believe that the State Department may have tried to cover up this truth? I can't believe that, but that is what we have been told.

Is it true that the State Department never kept the Congress informed about important FBI findings? Again, it is hard for me to believe that the State Department would do that, but I think it is

important for us to ask these questions.

And is it true that the State Department never kept the Congress informed about apparent Haitian efforts to block FBI inquiries? I think it is important for the Congress to know whether that has taken place. If so, we have a problem. How are we going to come to a resolution of these issues?

So, Mr. Chairman, I hope that today we can get honest, forth-right testimony from the Administration on the situation in Haiti. After all, the judgment that Congress makes can be no better than information that it receives. I am looking forward to this hearing and to clearing up some of the questions that have been raised in the briefings we have received here in Congress.

Thank you, Mr. Chairman.

Chairman GILMAN. Thank you, Mr. Roth.

Mr. Hastings.

Mr. HASTINGS. I thank you for holding this hearing, Mr. Chairnan.

I came here not intending to have any opening statement until I heard your opening statement, Mr. Chairman, which deeply distresses me. I have immense respect for you, and I believe that you are very careful in your deliberations with reference to all international affairs.

Let me suggest to you as one who has been on all sides of investigations that it best serves us to wait until all of the facts are in. To use the term "political killings" and "political murders" without any evidence that will support that, other than accusations, is a bit

distressing and leads to a lot of confusion in the realm.

Let me say this. For all intents and purposes, the Clinton administration's basic policies in Haiti have been an unqualified success, thanks to the tremendous work of the State Department and any number of other nonprofit and other organizations that have worked in that arena.

I live in Florida, and I witnessed with my own eyes the bodies of Haitians that washed up on the shores. They are no longer doing

that, and that in and of itself is a success.

There was an election, albeit with about the same numbers as the last American election, that was a national election, and that election went off without any problems of major consequence, in spite of the fact that many Members of this Congress said that there will be violence, there would not be an election, that Aristide would run. He did not run, and no one wishes to give them the credit for it.

My colleague, Mr. Roth, I suggest to you when you say that the State Department is deserving of query, I do agree that they are deserving of query but do not agree that we should level charges in the public realm without having had an opportunity to sit and counsel with the State Department in private with reference to any disagreements that we may have regarding the work that they have done to provide security and democracy and respect for human rights in Haiti.

I think the ultimate question has to be, how did the FBI get authority to be in Haiti in the first place? I believe the Haitian Gov-

ernment invited the FBI to participate in the investigation.

What did the FBI tell Haiti and President Aristide after their investigation and after the State Department asked them to give them the information that they had gathered? I believe you will find that they told them that they had no firm basis in the way of evidence that would support any conclusive determination that there was anything connecting Aristide with any of the murders that took place of the 20 that seemed to be of concern here.

I suggest and argue for all of us to be very careful in our deliberative undertakings when it comes to leveling false accusations lest you find them rebounding and causing you to have false accu-

sations placed against you.

Thank you, Mr. Chairman.

Chairman GILMAN. I would like to address Mr. Hastings' concern about considering the murders as political violence.

Mr. HASTINGS. I didn't say that. If you are going to address me, say what I said. I said you said political killings and political mur-

ders. I did not say what you just said.

Chairman GILMAN. Mr. Hastings, I refer you to a letter that has been distributed from Wendy Sherman, Assistant Secretary of State for Legislative Affairs, dated January 3rd, in which she states, "The reemergence of political violence in Haiti, and the possible implication of senior officials in the Haitian security apparatus has been and remains at the top of our bilateral agenda with Haiti. The President, the Vice President, the Secretaries of State and Defense, and National Security Advisor, and other senior American officials have dealt directly and forcefully with this issue in their conversations with President Aristide and we will do so with his successor. We are confident that, as the committee reviews the telegrams and other material requested and being made available, you will recognize the priority this issue has received."

Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman. I have a statement I would like to insert in the record.

As chairman of the Western Hemisphere——

Chairman GILMAN. Mr. Burton, I am going to ask that the January 3 letter be made part of the record and be distributed fully to our committee.

[The January 3 letter appears in the appendix.]

Mr. Burton. As chairman of the Western Hemisphere Subcommittee, we had hearings on October 12, and we have looked into these allegations of whether or not there were political killings.

I would like to say to my colleague from Florida, I suggest he get the CIA and FBI briefings in his office, because I think when you get that information it will illuminate this issue much further.

It is my belief that there were connections between, if not Mr. Aristide, members of the Aristide administration, in these political assassinations. One of my biggest concerns is that on October 12 we had Ambassador Dobbins testify before this committee and he indicated he didn't know anything about the assassination of Ms. Bertin, who was a leading political opponent, and that he

had not been notified of anything.

It is hard for me to believe that the FBI was down there investigating this and had information concerning this political killing and others and did not share that information with the Ambassador. That is why I am very happy today that we are going to put everyone under oath to make sure there is no misunderstanding about what went on, because I will tell you, if the FBI did communicate information to the Ambassador and other members of this administration and they did not tell our committee or subcommittee about it, deliberately misled us, that is something I don't think this Congress can tolerate.

Regarding it being an unqualified success, Mr. Aristide promised that there would be privatization down there. I will tell you, privatization is not taking place. There have been one or two industries where there have been some attempts at it, but there have been many people who wanted to do business in Haiti who have contacted me and said there has been roadblock after roadblock and there is no real attempt to privatize as Mr. Aristide promised he

would do to Haiti.

One of the primary objectives was to bring the free market system into Haiti so that they could control their unemployment rate, which is totally out of control. Haiti is never going to have a long-term stable economy or stable governmental structure when we leave unless they get the Haitians back to work.

When you have 50 percent or more of the people unemployed, you will have chaos. You are going to have crime, drugs, all those things. These free market objectives have not been accomplished, and the major impediment has been the Aristide administration.

Let's talk about the law enforcement agencies. I talked to President Aristide personally, and he promised me that they weren't going to have members of the Lavalas Party or the military involved in the police force. They were going to have totally new peo-

ple involved.

We brought an expert in from New York to train the new force, and now we find out that a lot of people connected to Aristide are going to be in positions of leadership in law enforcement agencies, which I believe will lead to further chaos, further political killings, and further corruption. That does not lead to a truly democratic

government.

So I say that I do not believe Haiti is an unqualified success. I believe we have been pouring millions of dollars and probably will end up pouring billions of dollars into a situation down there that is not going to solve the problem. I also believe once the troops leave you are going to see the same chaotic conditions we have seen in the past unless the new government starts living up to the commitments the Aristide Government made previously.

Thank you, Mr. Chairman. Chairman GILMAN. Mr. Goss.

Mr. Payne.

Mr. PAYNE. I will wait.

Chairman GILMAN. Mr. Goss.

Mr. Goss. Thank you, Mr. Chairman.

I want to thank you for having this hearing and issuing an invitation for me to participate. As a member of this committee on leave, I appreciate very much the opportunity to be back here.

Chairman GILMAN. Welcome.

Mr. Goss. It is my understanding that there is a likelihood that we will take this subject into closed hearings at some point in conjunction with other committees here. I know that some of the ques-

tions would be more appropriate for that day.

I wanted to comment to my friend from Florida, I am also from Florida, and we are very concerned about the economic situation in the country of Haiti because there has been a reemergence of the refugees. Fortunately, the U.S. Coast Guard is doing a superior job of intercepting at sea and returning to Haiti those people. But it is a signal that is out there for us at this time. But it is not the subject of these hearings.

One of the points I hope that the witnesses will speak to is something that I think is of great concern in terms of our investment

in democracy in Haiti, which is very, very sizable, and it is this: After the unfortunate incident of the assassination of the parliamentarian, Mr. Feuille, in early November, President Aristide made a speech which was widely interpreted by the press and observers as an invitation to incite mob violence (if not giving his blessing to class warfare), which led to disorder, disturbance, and death. The concern is that shortly after that the police force, that we are all counting on to provide law and order and stability after the departure of the international force, was loaded up with what might be considered political hacks or loyalists or people who have not gone through the vetting process that we had envisaged.

I would hope that we would have some commentary and discussion on the connection between those 13 or 14 hundred members being added to the police force at a time of great emotion and after a bad series of events in Haiti, and the question of whether or not that is reparable or even something that the Administration re-

gards as being of significance.

Thank you, Mr. Chairman.

Chairman GILMAN. Thank you Mr. Goss.

Any other members—Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman. I will be very brief.

I would certainly like to commend you for holding this very important hearing dealing with the police issue. I am anxious to hear

the testimony.

I, too, have been critical of the U.S. policy preceding the return of President Aristide. I also have questioned some of the reports of the CIA, as you may recall, and I hope there is a person from the CIA on the panel—but we heard these stories about the illnesses of Mr. Aristide that were circulated widely by the CIA. He was hospitalized in Canada somewhere, and as we went to send people to where these sites were supposed to be, there were no such institutions or records; doctors that were mentioned did not exist.

So it makes it very difficult to put much faith in what some of our agencies are projecting because of the credibility or the lack of

credibility of the past.

I think that the whole question of privatization should certainly proceed in a more rapid fashion. I think that the revolution is very difficult. We are witnessing a revolution here in the United States, with this big change in the government, but it is difficult to do a revolution, especially in 4 or 5 months.

We have to recall that President Aristide has not been back for

very long. It is very difficult to create a police force and ensure that there are no Lavallasse in the police force. That is like trying to have a police department in Washington saying there could be no

Republicans or Democrats.

Everyone has—if they are not Lavallasse, they are probably old Ton-Tons, or maybe the old FRAPH, or maybe the military of Haiti.

You are something even if you are not a card carrier.

When my friend Mr. Burton talked about, he can't call this an unqualified success, that is the first time I have heard that term used. I haven't heard anybody characterize Haiti as an unqualified success other than my colleague. I understand that Mr. Hastings did. But I think that unqualified success, if you look at what has

happened and as you look at the accomplishments, I think it is ex-

tremely successful.

I would also hope that we could really get down to the bottom of what is going on. Any kind of killing does not necessarily have to be politically motivated. We have, as you know, many homicides in this country, and you don't first look to see whether it is politically motivated or not. I think that perhaps there are homicides all around the world, unfortunately, but any time there is one in Haiti we try to find out whether this was a political situation.

So I would just look forward to hearing our witnesses and appreciate you once again, Mr. Chairman, for calling this very important

hearing at this time.

Chairman GILMAN. Thank you.

Mr. Ballenger.

Mr. BALLENGER. I don't have a CIA report or an FBI report, but surprisingly I got a Christmas card from Haiti from a long-time friend, resident of Haiti, but a U.S. citizen. He says, in part, "Good to hear from you. We are all fine. Our government, however, has made a big mess of this place, and the press and the U.S. Embassy here just spread disinformation."

That is an unsolicited statement from a friend of mine in Haiti.

Thank you, Mr. Chairman.

Chairman GILMAN. Thank you, Mr. Ballenger.

If there are no further statements, our witnesses this morning are Ambassador Robert Gelbard, Assistant Secretary of State for International Narcotics and Legal Affairs; Ambassador James Dobbins, State Department Special Coordinator for Haiti; Bill Perry, Deputy Assistant Director, Criminal Investigative Division, FBI; and Seth Waxman, Associate Deputy Attorney General of our Department of Justice.

Will the witnesses please rise to be sworn in?

Witnesses sworn.

Chairman GILMAN. Thank you. You are now under oath. We will proceed. We will start with Ambassador Gelbard.

TESTIMONY OF HON. ROBERT S. GELBARD, ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL NARCOTICS AND LEGAL AFFAIRS, DEPARTMENT OF STATE; JAMES DOBBINS, SPECIAL COORDINATOR FOR HAITI, DEPARTMENT OF STATE; BILL PERRY, DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION; AND SETH P. WAXMAN, ASSOCIATE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

#### TESTIMONY OF HON. ROBERT S. GELBARD

Mr. GELBARD. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, thank you for the opportunity to discuss our role in the establishment of a professional civilian law enforcement authority in Haiti. Such a force is essential to a secure environment in the country, one in which fundamental human rights and freedoms are fully respected.

Our assuring that the Government of Haiti has the ability to maintain such an environment—after the departure of U.N. forces in 2 months' time—is a fundamental element of our policy in Haiti.

I would like to begin by underscoring an achievement of which the governments of the United States and Haiti can both be proud. In about 1 year's time, in a nation whose institutional development generally is very weak and where the establishment of professional institutions independent of political influence is almost unheard of, we—the United States and Haiti together—have built a new national police force which is in the process of becoming the capable, apolitical, professional force required to help buttress this newly democratic nation.

As we will discuss today, Mr. Chairman, much still needs to be done to accomplish this goal in full. But we would be very harsh judges indeed not to acknowledge that the Haitian National Police

has made tremendous progress in the year since its founding.

The force that has been deployed to date is not perfect—given the weak institutional environment that exists throughout Haiti, it is difficult to imagine that it might ever be perfect—but it is perfectable, in my view, and to this end, continued U.S. engagement—within strictly defined requirements for HNP performance is key.

Mr. Chairman, I believe we can ensure the new police force meets at least minimal operational standards within the next 2 months, a level of capability that will allow for the withdrawal of U.N. and U.S. forces on time and in full, provided two criteria are

First, the United States must complete the basic training of the students now enrolled at the National Police Academy in Port-au-Prince. Second, the Government of Haiti must take action to ensure that the HNP remains a nonpolitical, professional force.

What I propose to do in my testimony is to give this committee an overview of U.S. actions in support of the establishment of a new civilian public security structure in Haiti; lay out our objectives, and what we have done to meet them; describe for you some of the obstacles that have arisen which could impact on our goals,

and how we are addressing them.

Our interest in helping the Haitian Government build a new civilian police force predates the restoration of democracy to Haiti. For example, after the coup removed the legitimate government of President Aristide, we worked with the Haitian Government-inexile to develop a conceptual plan for a new civilian police force, which was completed in March 1993.

ICITAP worked with exiled GOH members and with the Haitian Parliament to draft new police legislation, which eventually was enacted into law in December 1994 after the reestablishment of the

legitimate government in Port-au-Prince.

In the summer of 1994, we initiated a program in four phases

to get a new police force up and running:

First, before the September 1994 Multinational Force-MNFdeployment, we helped the then-exiled Government of Haiti to interview and select 1,000 persons from the Haitian migrant community living at Guantanamo to assist the MNF in performance of its initial public safety duties. The Guantanamo group was given minimal training, designed only to allow them to perform supporting roles for the MNF. The group has not been trained, nor is it qualified, to carry out the full range of police work.

Second, in October 1994, we assisted the rightful Haitian Government in the establishment of an Interim Public Security Force (IPSF). With a few exceptions, the IPSF was made up of the Haitian Armed Forces—FAd'H—who were able to pass a basic check. This review included vetting of names against lists supplied by human rights organizations and U.S. law enforcement agencies, to exclude those who had committed human rights violations or other criminal offenses.

The IPSF, of course, was meant to serve only as an interim solution to Haiti's indigenous public security needs while we worked

with the GOH to form a new police force.

Third, prior to the MNF's deployment, we led the effort to recruit 850 International Police Monitors—IPM's—to monitor and assist the IPSF. Later, with the MNF's transition to a U.N. command, the IPM functions were assumed by a UN-mandated Civilian Police—CIVPOL—force, which has also recently engaged in field assistance and training to newly deployed members of the Haitian National Police.

Finally, in January 1995 the GOH, with our full support, began the process of establishing a new apolitical, professional Haitian

National Police.

Working with the GOH—principally through ICITAP—to design the new Haitian National Police, we established the following ob-

jectives:

All candidates would be selected solely on the basis of merit; those selected would undergo rigorous basic training aimed at providing them with the skills to carry out community-based policing in a democratic society while inculcating a respect for fundamental human rights; newly graduated agents would continue to receive some level of field training and reentering from academy instructors and CIVPOL police monitors; agents would have the basic equipment necessary to carry out their duties; and after a period of field service, HNP agents would selectively receive advanced and specialized training—crowd control, VIP protection, investigations, forensics, supervisory training, et cetera—to round out the capabilities of the force as a whole.

Our horizon for the full implementation of the program was 5 years. Our work with the HNP is about at its first anniversary,

and I believe it is a good time to take stock of our efforts.

Our record with the HNP to date:

Mr. Chairman, I believe we have made good progress on standing up the new Haitian National Police. Our merit-based recruitment—conducted by multinational teams composed of U.S., Canadian, French, and Haitian Government representatives traveling the countryside—produced over 33,000 candidates for 5,000 available slots.

Testing, which was rigorous but fair, included written and oral examinations as well as psychological profiling and comprehensive medical testing. While all candidates were vetted for past criminal activity and human rights abuses, once vetted, they were assigned numbers to disguise their identities. In this way, candidates could not be selected by name based on political considerations.

Less than 15 percent of the applicants passed the entrance tests. HNP trainees today represent the most talented in Haitian society. Further, ICITAP training at the new National Police Academy has provided students with basic skills for community policing. This has been accomplished in spite of an accelerated program midstream to meet the GOH's revised officer deployment schedule.

We did this, Mr. Chairman, by dividing the curriculum into two sessions, and opening an auxiliary "academy" at Fort Leonard Wood, Missouri. For 6 months we offered 8 weeks of conceptual training—human rights, Haitian law—at the Academy in Port-au-Prince, and 8 weeks of practical programs—firearms, arrest procedures, driving—at Fort Leonard Wood.

Throughout, international field-mentoring efforts have continued, mostly through CIVPOL, but this support is not enough, given the relative inexperience of the HNP recruits. We believe the GOH may ask for a continued CIVPOL presence following the expiration of the U.N. mandate in February, but such a request has not yet

been made.

Equipping the HNP is a continuing problem. Conditions at many station houses are poor, office infrastructure minimal, and the force still lacks many of the most basic items used by modern police. It is especially important that the GOH dedicate more of its own resources to standing up the police. In addition, the force will also need more specialized training, which ICITAP would propose to begin soon.

Future police professionalism:

Like this committee, Mr. Chairman, this administration is extremely concerned about the continuing apolitical and professional profile of the HNP. While we recognize the need for greater numbers of police than will have been deployed by the departure of the U.N. forces, we have strongly argued against the Haitian Government's decision to merge significant numbers of the IPSF into the HNP.

We have not taken the position that IPSF members ought to be excluded from the HNP but rather have argued that the decision to include IPSF members should be made on a case-by-case basis. Their eligibility for consideration should be based first on their professional performance—with special emphasis on human rights

grounds-while in the IPSF.

Assuming they are able to meet the same recruitment standards as other HNP academy graduates, we would support their inclusion and would be willing to provide U.S.-funded academy training, if

funding for such training were available.

As an alternative, we would support the creation of specialized corps—for traffic control, for stationary security at public facilities—that would induct IPSF members at something other than the "sworn officer" status of the HNP Academy graduates. There is a demonstrated need for such personnel throughout Haiti.

We have expressed our concern in particular about the induction of more than 100 ex-FAd'H officers into headquarters and field-leadership positions in the HNP. We have continued to recommend merit-based selection and have made our concerns clear to the GOH.

We understand that the U.N. Civilian Police had some role in selecting these officers for retention, and we understand that the United Nations has recommended their incorporation into the

HNP. While we understand that the United Nations based its recommendations on feedback from its corps of 600 police monitors serving in the field, we nevertheless differed in our assessment and in our advice to the GOH.

As Ambassador Dobbins mentioned, we hold our deepest concern over the inclusion of individuals in the HNP's ranks who may have committed criminal acts. We will not support a force which harbors criminals in its ranks. On this, our position with the GOH has been unswerving. We want to ensure a thoroughly apolitical, professional national police force that respects human rights and fundamental freedoms, and our future support is contingent upon

progress toward this basic goal.

Mr. Chairman, we are at a delicate juncture in terms of our training of the HNP. Without the release of further funds through AID to ICITAP, the ICITAP police training program in Haiti will run out of funds on January 15. At that time, the expatriate training staff of the Haitian National Police Academy—some 150 police officers, largely from the United States but including some 20 Canadian RCMP and 5 French national police instructors as well—would be dismissed and sent home. In effect, the Academy would close.

That will have important consequences on our ability to stand up a fully functional HNP capable of taking over all public security functions from the UNMIH forces and allow their orderly departure. It would mean that the last two classes of HNP cadets—1,500 members of basic training classes 8 and 9—could not graduate and

would be unprepared for the field.

Further, certain specialized training programs could not be carried out, and ICITAP technical assistance to the HNP would be terminated. Departure of the ICITAP advisors now would seriously hamper our efforts to institutionalize procedures and operations of

the new police force.

Mr. Chairman, the Administration continues to believe, and will seek to confirm, that the GOH broadly shares the goals I have outlined above. With the GOH, we hope to complete the basic task of fielding a well-trained, motivated corps of professional Haitian police, a force capable of carrying out its public security mandate while respecting human rights. We want to finish what we started to give Haiti; its best possible chance for lasting democracy.

Thank you, Mr. Chairman.

Chairman GILMAN. Thank you Mr. Gelbard.

Chairman GILMAN. Ambassador Dobbins, Special Coordinator for Haiti, Department of State.

#### TESTIMONY OF JAMES DOBBINS

Mr. Dobbins. Thank you, Mr. Chairman.

Chairman GILMAN. You may submit the full statement or summarize it.

Mr. DOBBINS. With your permission I will excerpt from a fuller

statement which will be submitted for the record.

Chairman GILMAN. The full statement will be received, without objection.

Mr. DOBBINS. Haiti has a long, unhappy tradition of political violence. Helping Haiti's Democratic leaders break with that tradition

has been a major objective of American policy.

With the dismantlement of the Haitian Army, once known for its violence and repressive tactics, the abolition of the rural section chief system which occurred in late 1994 and the formation and training of a civilian national police force, there has been a dramatic drop from violence and an improvement in the human rights situation. All types of violent crime are down, and political violence has fallen off even more sharply.

Following 3 years of brutal repression, during which rape, torture, and murder were the routine instruments of governance, many had expected that the restoration of Haiti's legitimate government would be followed by a wave of retribution. Thanks to the professionalism of American and international forces and President

Aristide's emphasis on reconciliation, this has not occurred.

But recognizing how the situation has improved is not to suggest that further steps are not needed to eradicate political violence from Haitian life. As I have noted to this committee on October 12th in my submitted testimony, there have been some two dozen murders committed in Haiti since October 1994, which fall in the category of possible political or revenge killings, the most prominent of which was the murder of Mireille Bertin on March 28, 1995.

Recognizing the importance of eradicating political violence from Haitian life, the U.S. Government has over the past year maintained an intense dialog with President Aristide regarding the Bertin investigation, other potential political murders, possible connection among these killings, possible involvement of individuals in

official positions with such activities.

President Clinton, Vice President Gore, Secretary of Defense Perry, Assistant to the President for National Security Lake, Deputy Assistant Secretary of State Talbott, Ambassador Albright, Ambassador Swing, and other representatives of State, Justice, and Defense have all, on various occasions, reviewed these issues with President Aristide.

In these discussions, we have urged that acts of political violence be investigated and prosecuted aggressively. We have urged that anyone implicated in such activities be relieved of all official responsibilities. We have urged that a new professional police and justice establishment be created, untainted by any association with

past acts of political violence.

President Aristide accepted our offer to have the FBI investigate the Bertin murder. He subsequently sought to broaden the scope of the FBI's efforts to cover other high-profile, possibly political cases dating from the coup period. He accepted our counterproposal that he form a new Haitian investigative unit to investigate all such crimes, including the Bertin case. He agreed that this investigative unit should be made up of ICITAP-trained graduates from the police academy and that it should be supported by professional investigators from the Royal Canadian Mounted Police, the French Gendarmerie, and the United States, with forensic and other technical support from the FBI.

Our dialog with the Government of Haiti on these matters is by no means concluded. We will continue to press for aggressive investigation of the Bertin and other possibly political, possibly connected murders.

We will continue to urge that the Haitian Government separate individuals who may be implicated in these acts from any connection with the police or judicial establishment even before that investigation is complete.

We will continue to urge that appointments to senior positions in the Haitian National Police be based on merit and competence, not

patronage and political loyalty.

We will continue, in other words, to urge that the Government of Haiti sustain, preserve, and extend the reforms in Haiti's police

and justice system which it has set in train.

Assistant Secretary Gelbard has addressed the issues related to our training of the Haitian National Police. As he has noted, we have made clear that we will not support a force which harbors criminals within its ranks. This includes, obviously and especially, anyone implicated in political violence. We have over the past 15 months made major strides in ridding Haiti's security establishment of such individuals. We will remain vigilant and optimistic that our efforts can have a continued effect.

We have worked closely with the Congress in helping Haiti to create a new police force, establish the rule of law, and deal with the problems of political violence. Department representatives have met with members or staff over 30 times since January 1995 and

11 times since October.

I raised the Bertin case in my October 12 testimony to this committee. On November 2, State and all other agencies concerned provided detailed and extensive information on this same subject to the House Select Committee on Intelligence.

Mr. Chairman, I understand and am deeply distressed that you are concerned that the State Department may not have furnished this committee on October 12 with the same information that it

gave to the Intelligence Committee 2 weeks later.

On October 12, I informed this committee that the Government of Haiti had just set up a special investigative unit to pursue the Bertin and other possibly politically motivated killings. Prior to that event, the FBI had treated this inquiry as an ongoing criminal investigation and shared only such information as it deemed necessary and advisable with the Embassy, DOD, and other agency personnel in Port-au-Prince.

It was following the creation of the special Haitian investigative unit and thus later in October that FBI representatives in Washington met with State and other relevant agency representatives to share the results of their investigation as we prepared to turn this material over to the new Haitian investigative unit and to respond to inquiries from the House Select Committee on Intelligence.

Mr. Chairman, in 8 weeks the peacekeeping operation of the United Nations in Haiti will be completed. Our troops will return home. Their orderly, safe, and timely departure is, I know, a priority that all of us share. We have learned through experience that the most difficult part of any peacekeeping operation is often its conclusion, not its initiation.

Essential to the successful and timely conclusion of this particular operation is the deployment on schedule of Haiti's new police force in order that something is in place to take the place of departing American and other international military forces and assume responsibility for security in Haiti when the mandate of the U.N. peacekeeping force terminates in 8 weeks.

Over 1,500 police cadets remain in training today. We seek your cooperation in assuring the funding necessary to allow these cadets

to complete their training over the next 8 weeks.
[The prepared statement of Mr. Dobbins appears in the appen-

Chairman GILMAN. Thank you, Mr. Dobbins.

Mr. Bill Perry, Deputy Assistant Director, Criminal Investigative Division of the FBI, you may submit your full statement or summarize, whichever you see fit.

#### TESTIMONY OF BILL PERRY

Mr. PERRY. I will read a summary of my complete statement. Chairman GILMAN. Your complete statement will be made part of the record, without objection.

Mr. PERRY. Mr. Chairman and members of the committee, my name is William E. Perry, and I am a deputy assistant director of

the Federal Bureau of Investigation.

Special Agents of the Federal Bureau of Investigation arrived in Port-au-Prince, Haiti, during the early morning hours of March 29, 1995, to initiate an investigation into the murders of Mireille Durocher Bertin and Eugene Baillergeau, Jr. As the committee knows, Madam Bertin was a prominent, politically active Haitian attorney and an outspoken critic of President Jean Bertrand

At approximately 3:30 p.m. in the afternoon of March 28, 1995, both Bertin and Baillergeau were slain by 9mm and 5.56mm gunfire from at least two assailants as their car sat in heavy traffic

on Martin Luther King Boulevard in Port-au-Prince.

The FBI's investigative strategy was designed to ensure that a thorough and comprehensive investigation was conducted, in spite of the FBI's lack of compulsory process, witness protection, et cetera, in a foreign country. The investigative plan sought to examine a variety of possible motives for the murders.

Upon arrival in Haiti, liaison was immediately established with Haitian Government officials and with the U.S. Embassy. Since we were conducting a law enforcement investigation in a foreign culture, with a foreign language, and with no contacts of our own, we met regularly in Port-au-Prince with representatives of the Embassy, the U.S. military, and other relevant U.S. agencies in order to obtain assistance and advice and generally to apprise them of the course of our investigation. Discussion included investigative strategies, problems experienced, and certain investigative information developed on the murders.

We did not provide this information as an intelligence gathering or intelligence dissemination effort. We were not in Haiti to do either, and we did not. Rather, we provided information to these agencies in Port-au-Prince in order to obtain their cooperation and assistance and thus to enhance our ability to achieve our investiga-

tive goals.

Outside of Port-au-Prince, the FBI's level of information sharing with other agencies was much different. FBIHQ officials interacted with DOS counterparts and DOJ officials infrequently with respect to the Bertin investigation when necessary to support investigative efforts in Haiti.

For example, my first interaction with Ambassador Dobbins—or with Associate Deputy Attorney General Waxman, for that matter—was on a trip we made to Haiti together in July 1995 to meet with President Aristide to discuss the means of removing certain

obstacles to our investigation.

In late October of this year, when we concluded that our investigation in Haiti could not productively continue and the time had come to turn the investigation over to the newly constituted Special Investigative Unit of the Haitian National Police, we discussed this proposed transition and provided a substantive briefing on the Bertin investigation to Washington representatives of the Depart-

ments of State and Defense and other agencies.

The FBI encountered difficulties and major obstacles at the inception and throughout the investigation because of its unusual nature and other uncontrollable circumstances. In this case, the FBI was investigating a violation of foreign law. The investigation was conducted in a foreign country and in a foreign language. Moreover, the investigation was commenced at a time when the criminal justice system in Haiti had not functioned effectively for years. There were also serious logistical problems and cultural differences to overcome.

Further complicating the investigation was the fact that the FBI has no legal status in Haiti. The FBI cannot obtain orders from judicial authorities to compel witnesses to give statements. There is no legal obligation for persons to cooperate or provide truthful information to the FBI. Similarly, the FBI has no authority to conduct searches or obtain subpoenas to gather evidence. The FBI also has no authority to offer any form of witness protection.

As a result of investigative efforts, particularly source information of unknown reliability, the FBI expressed to the Government of Haiti the likelihood that it would be necessary to interview government officials and employees, including Cabinet members.

In early June 1995, FBI agents interviewed various IPSF members. Subsequently, the FBI experienced significant investigative difficulties because of its inability to interview Government of Haiti officials and employees, including some members of the IPSF and the Palace Security Service, on terms consistent with an impartial,

professional investigation.

Issues were raised regarding the conditions under which the FBI could interview IPSF personnel. The FBI had extended negotiations with Government of Haiti officials and the attorneys representing the IPSF officers regarding these interviews. Ultimately our efforts were stymied by what, in our professional judgment, were unreasonable conditions placed upon any such interviews by private attorneys purporting to represent these individuals. As the FBI has no access to compulsory process of any sort in Haiti, we

felt the time had come to turn the investigation over to the Haitian

authorities.

I hope my appearance today will address the Committee's questions regarding the FBI's involvement in the Bertin/Baillergeau murder investigation in Haiti.

[The prepared statement of Mr. Perry appears in the appendix.]

Chairman GILMAN, Thank you Mr. Perry.

Mr. Waxman, Associate Deputy Attorney General, Department of Justice.

#### TESTIMONY OF SETH P. WAXMAN

Mr. WAXMAN. Thank you, Mr. Chairman, and members of the committee.

I am Seth Waxman. I am an Associate Deputy Attorney General in the U.S. Department of Justice. I appreciate the opportunity to appear before the committee today to answer any questions the

committee may have of me.

The interests of the Justice department in Haiti are threefold. First, our Immigration and Naturalization Service is the agency principally responsible for dealing with illegal and of course legal immigration from that country.

Second, our training components ICITAP and OPDAT have been principally responsible for providing training for police, prosecutors, and judges in Haiti, a country that only a little over a year ago lacked any functional prosecutorial or judicial system.

Third, as the committee knows, upon the request of the State Department and the Government of Haiti, our Federal Bureau of Investigation was called in urgently to conduct an investigation into the murders of Madam Mireille Bertin and a companion.

I understand the committee may have questions about some or all these areas and particularly the level of information sharing between the FBI and the Department of State with respect to the

Bertin investigation.

Since I have been the principal Department of Justice contact in Washington with the other Federal agencies on all three of these issues, I thought it might be helpful to the committee if I made myself available to answer any questions you may have.

I have no prepared statement other than to say that the Department of Justice is proud of the contribution it has been able to make over the past 15 months in the rebuilding of Haiti, and I am

grateful you have permitted me to attend the hearing.

Chairman GILMAN. Thank you, Mr. Waxman. We thank our pan-

elists for their testimony.

I will start with questions. Ambassador Gelbard, has President Aristide's decision on December 6 to integrate ex-soldiers and others recruited at Guantanamo migrant camps into the Haitian National Police compromised the integrity of the U.S.-trained police force?

Throughout your testimony you have indicated that we are trying to keep this force apolitical and make certain it is going to be

independent. Could you comment on this?

Mr. GELBARD. Yes, Mr. Chairman. As I said in my testimony, and as you just commented, we have been very clear in the preparation and development of our training program for the Haitian National Police, as we are in any other police training program elsewhere in the world, that our goal is to develop a highly profes-

sional and apolitical force.

That is why, when we undertook the recruitment process, as I explained in my testimony earlier, we stressed the need for a purely objective selection process based on objective criteria, with the result that a very small percentage of those who were initially interviewed were finally selected.

We took the position from the beginning that we were prepared, in principle, to entertain the idea of the possible inclusion of IPSF or even Guantanamo trainees into the Haitian National Police if they met the criteria that were established for regular HNP recruits and if during the time that they served in the IPSF their record, both professionally and in terms of human rights, proved to be exemplary.

We are now taking the position that, with the Haitian Government, that we are prepared to look at these individuals on a caseby-case basis, looking at their human rights and professional record over the course of the last year or so. We are prepared to look at them in terms of their academic criteria too, to see if they

meet the minimum standards that would be required.

Chairman GILMAN. Is the proposal by the Haitian Government to integrate some 1,400 to 1,500 members from the former police agencies into the new police force acceptable?

Mr. GELBARD. As I said, we could only accept their becoming cadets, candidates, if they meet the minimum objective criteria and if we see that they have performed-

Chairman GILMAN. Does the Aristide Government go along with

that proposal, or have they already integrated?

Mr. GELBARD. They have not integrated yet, and we are still in the process of discussion with the Haitian Government about this. Chairman GILMAN. Have uniforms been distributed to these new 1,400 or 1,500 members?

Mr. GELBARD. I am not aware of that.

Chairman GILMAN, Mr. Dobbins, do you want to indicate whether that has taken place?

Mr. DOBBINS. I think it has, almost entirely, if not entirely.

Chairman GILMAN. So it is a fait accompli that they are integrated.

Mr. DOBBINS. It depends on what you mean by integrated, sir. Let me say this. The Presidential decree set a policy and indicated that the implementation of it would be turned over to something called the Police Council, which has the Minister of Justice on it, the head of police, and several other senior officials.

To our knowledge, this policy-setting body has not yet made all of the decisions, which would include what their pay scales are, what their ranks are in relation to others, the degree to which they will carry weapons and what weapons, the degree to which they will exercise full or limited police authority.

A number of the people that are in this 1,500 are doing fairly specialized things, and it is not clear the degree to which they will be circumscribed so they can only do that. For instance, 200 or some are members of the palace guard, the equivalent of the uniformed Secret Service. We had urged that this function be done by

the Haitian National Police. It is a police function but a very limited one. It is not clear whether these people will only continue to do that which they have been doing and which we have been training them to do.

Another component is apparently doing nothing but traffic duty. Again, we don't know whether they will be uniformed and equipped

in a way that makes clear that they are only traffic monitors.

Chairman GILMAN. Ambassador Dobbins, is there any information that any member of the palace guard is implicated in any of the killings that took place? Is there any information available to you that indicates implication of the palace guard in any of the killings?

Mr. DOBBINS. We have submitted a good deal of information that

relates to these questions to the House Intelligence Committee.

Chairman GILMAN. I am asking if you have received any infor-

Mr. Dobbins. And we are making that available to the committee.

Chairman GILMAN. I don't think you are answering the question. I am asking, have you received any information that members, any members of the palace guard, were implicated in any of these political acts of violence?

Mr. DOBBINS. Yes, and also members of the police. What I am

trying to say, Mr. Chairman-

Chairman GILMAN. Did you make that information available to our committee at any time? Could you answer that yes or no? Did you make any of that information available to this committee?

Mr. DOBBINS. The answer is either yes or about to be yes in the

sense that we have sent you up a list-

Chairman GILMAN. I am asking up to this point, prior to this hearing, have you made any of that information available to our committee?

Mr. Dobbins. The letter which I believe we gave you yesterday

said we were—I am trying to answer the question.

Chairman GILMAN. I am asking prior to this hearing and the letter that we received yesterday-have you made any of that information available to this committee?

Mr. DOBBINS. Not that I know of, sir.

Chairman GILMAN. Are you aware of any information linking President Aristide, members of his Cabinet, or closest advisors to the political killings or political violence?

Mr. DOBBINS. Let me say that the Bertin investigation was initiated as an independent FBI investigation because of information in our possession, which I think was publicly known at the time-

Chairman GILMAN. I submit, you are not answering the question. Are you aware of any information linking President Aristide, members of his Cabinet, or closest advisors to the political violence or political killings? Could you answer that yes or no?

Mr. DOBBINS. The Minister of the Interior was, I guess, the word would be, a suspect from the beginning of the Bertin investigation. It was because there were allegations that the Minister of Interior

was involved-

Chairman GILMAN. And any other security advisors?

Mr. DOBBINS. There is information of this nature, sir, and what I am trying to-

Chairman GILMAN. Have you made that information available to

this committee prior to these hearings?

Mr. Dobbins. Not that I know of, nor, Mr. Chairman, am I aware of any requests for such information.

Chairman GILMAN. Ambassador Dobbins-

Mr. BURTON. Mr. Chairman, I hope that I have an opportunity to go back to this line of questioning, because I was the chairman of the subcommittee on October the 12th hearing when these questions were asked.

Chairman GILMAN. You will have an opportunity to pursue that,

Mr. Dobbins, did the Haitian Government cooperate fully with

the FBI's investigation into the Bertin killing?

We understand from the testimony given today that the FBI concluded its investigation because they felt it was unproductive, that they were meeting with certain obstacles.

Did the Haitian Government cooperate with the FBI's investiga-

tion? Can you answer that yes or no?

Mr. DOBBINS. We were disappointed with the level of cooperation we received. Mr. Waxman took the lead in discussions on this subject with the Haitian Government. He may want to elaborate both on what was agreed and-

Chairman GILMAN. Mr. Dobbins, did you raise this issue with the

Aristide Government, the issue of lack of cooperation?

Mr. DOBBINS. Repeatedly.

Chairman GILMAN. When did you first raise that issue with the

Haitian Government?

Mr. DOBBINS. I think that the FBI sought and received the Embassy's assistance whenever it encountered an obstacle. Some of those obstacles were overcome as a result of that, and in the end some weren't. I would guess that those obstacles-I would guess that those interventions on the part of the Embassy in support of the FBI began almost immediately upon its arrival.

Chairman GILMAN. And this became a major issue, did it not? Mr. DOBBINS. It became an issue to the point where, as Mr. Perry noted, Mr. Waxman and I and Mr. Perry traveled to Haiti

in July in order to seek to remove some of these obstacles.

Chairman GILMAN. And these obstacles were occurring from—almost from the time of inception of the FBI investigation in March;

is that correct? Between March and-

Mr. DOBBINS. As Mr. Perry said, there were a number of difficulties conducting what was a unique operation in a unique environment. Difficulties emerged probably in the first day. Some were overcome; some in the end were not.

Chairman GILMAN. I think when you appeared before this committee on a prior occasion you asserted you knew little about the

investigation until October. Is that correct?

Mr. DOBBINS. No. I raised the Bertin investigation in my testimony before this committee in early October, which I think is the occasion.

Chairman GILMAN. Prior to that you had not notified us of problems the FBI was encountering. Is that correct?

Mr. DOBBINS. I don't believe I had any contact with this commit-

tee prior to October 12.

Chairman GILMAN. On October 12 you stated before Mr. Burton's committee, "The FBI has not briefed me or, as far as I know, anyone else in the Administration on their findings. They are still conducting their investigation and, as far as I know, have not come to a conclusion." That is an October 12, 1995, statement.

Mr. DOBBINS. Right.

Chairman GILMAN. Do you still stand by that statement?

Mr. DOBBINS. Absolutely.

Could I add, Mr. Chairman, that I raised the Bertin investigation in my testimony and spoke about what the State Department was doing to facilitate and advance that investigation. So I took the initiative.

As the chairman will recall, this was a compressed hearing with about 10 or 12 witnesses, and nevertheless I felt, although the focus was on the elections, that I needed in my opening statement to get in the announcement about the Haitian decision to create this investigative unit, and I asked the chairman's leave to make that statement, because it was a new step which they had done at our urging, and I wanted to get that on the record.

Mr. BURTON. Mr. Chairman, will you yield?

There is absolutely no doubt that in the line of questioning—you could read the entire text of the questions and answers—that it was very clear that I was asking Mr. Dobbins if he had any information or had been given any information or had any consultation with the FBI regarding the Bertin murders. And he said, as you clearly stated, that, "The FBI has not briefed me or, as far as I know, anyone else in the Administration on their findings," and that is highly questionable because we now know from the FBI statement that they met regularly with the Administration and

Chairman GILMAN. Reclaiming my time—and you will have the opportunity to pursue that further—there were cables released by the State Department that reflected the following: 39 cables referred to the Bertin killing, including the foiled plot against her; 30 were sent to the embassy in Port-au-Prince to the State Department, of which 19 were "slugged" specifically for Dobbins or his office symbol, meaning that he is listed separately as an addressee to ensure that it reaches his desk; 9 were sent from the State Department to the Embassy, at least 3 of which were cleared or approved by Mr. Dobbins. This number is probably higher, but on some cables the clearances were crossed out. And 22 cables referred to the FBI's investigation, of which 9 mention specific startling evidence or leads.

In that same period, U.S. officials discussed the investigation of high-profile execution-style killings with President Aristide, Prime Minister Michel, or Justice Minister Exume 18 times, with 3 of these meetings involving Secretary Christopher, Deputy Secretary Talbott, or Interior Secretary Babbitt and 15 involving Ambassador Swing or his charge.

Were you familiar with those cables and those meetings?

Mr. DOBBINS. Certainly.

Mr. PAYNE. Point of personal privilege. Are there new rules now? Will other members have an opportunity to ask questions? We have been here 20 minutes-

Chairman GILMAN. I have exceeded my time. I apologize.

Mr. Hamilton.

Mr. PAYNE. I think it is unfair that other members will have to

sit here and listen to a monologue for half an hour.

Mr. ROHRABACHER. Mr. Chairman, I thought your line of questioning was right on target, and we should get to the bottom of these things rather than trying to get around the side of it.

Mr. PAYNE. I have no problem with the line of questioning. It is just that someone else would like an opportunity to have a line of

questions.

Chairman GILMAN. Mr. Hamilton.

Mr. HAMILTON. Thank you, Mr. Chairman.

Mr. Perry, do I understand from your testimony that the Government of Haiti has been uncooperative with respect to the FBI in-

vestigation?

Mr. PERRY. Congressman, we have had difficulties, had delays and difficulties, in proceeding with our investigation in terms of interview of people within the Government of Haiti in the conduct of our investigation, and, as I stated in my testimony, we made efforts during the course of the investigation to eliminate those difficulties so we might proceed and interview individuals within the Government of Haiti that we wanted to interview.

Mr. HAMILTON. So your impression is that the Government of

Haiti was uncooperative?

Mr. PERRY. We couldn't get done what we wanted to get done, Congressman.

Mr. Hamilton. Because the Government of Haiti did not cooper-

ate. Is that correct?

Mr. Perry. We had difficulty overcoming the conditions that— Mr. HAMILTON. Do you believe that the Government of Haiti was cooperative in advancing your investigation?

Mr. PERRY. They could have been more cooperative, I believe.

Mr. HAMILTON. Did they put obstacles in your way? On the one hand, we have had testimony this morning that President Aristide sought the FBI, approved it coming in. Then your testimony says, at least the way I understood it, that you had a lot of obstacles in trying to carry out that investigation, and it was my impression that many of those obstacles were created by the Government of Haiti. Am I incorrect in that impression?

Mr. PERRY. No. That is correct.

Mr. HAMILTON. Ambassador Dobbins, this charge against you and against the State Department of covering up, I want to get as clear as I can about the sequence of events here and exactly what happened. I don't operate from any conclusions here.

You appeared before the committee on October 12, and you said an investigation was under way with regard to the one assassina-

tion. Is that correct?

Mr. DOBBINS. I said that, and I also noted in the prepared testimony that we were very concerned about this pattern of activity and about the 20-odd other assassinations or possible assassinations whichMr. HAMILTON. Are you aware in any of this that you withheld

information from this committee?

Mr. DOBBINS. Mr. Congressman, I was asked what the FBI had found out. I knew from personal experience that I was not adequately informed to answer that question in an authoritative way that the Congress would expect. I was not informed.

I had asked colleagues at my level in Washington whether they had been briefed. They told me they had not. I had been asked to leave the room when details of this case were discussed, and I understood the reason, that this was a delicate law enforcement matter and that there was a sort of need-to-know rule.

Mr. HAMILTON. So in your own mind, Ambassador Dobbins, you did not withhold any information with the committee?

Mr. Dobbins. On the contrary. I volunteered information. I went

on to give at least one detail-

Mr. HAMILTON. At what point did you give this information to the Intelligence Committee?

Mr. DOBBINS. Two weeks later.

Mr. HAMILTON. After you did that, did you come back to this

committee and give information?

Mr. DOBBINS. We weren't asked. The Intelligence Committee asked for this. They asked for it in a classified fashion and received voluminous material.

Mr. HAMILTON. You are aware that the House Intelligence Committee is a very special committee around here and doesn't routinely share information with other committees; you are aware of that, I presume?

Mr. DOBBINS. Yes.

Mr. Hamilton. I want to ask a question about money now. I understand the chairman and perhaps others have a hold on \$5 million for the training of police. Is that correct, Ambassador Gelbard?

Mr. GELBARD. Yes, Congressman. Mr. HAMILTON. I don't know the reasons for that, but I want to ask you to tell me the impact of that now. Suppose the money is

held, not released; what happens?

Mr. GELBARD. As I said in my previous testimony, Congressman, we have roughly \$500,000 still available to run our police training program. Our goal has been to graduate approximately 1,500 more police to get up to the level of 5,000 graduates by the end of February, at which time the U.N. forces are due to leave. The available funds would cause us to be forced to shut down the academy, to all intents and purposes, by mid-January.

Mr. HAMILTON. The unavailability of those funds?

Mr. GELBARD. Due to the unavailability of the additional funds.

Mr. HAMILTON. What are the consequences of that?

Mr. GELBARD. As I said, we worked with the Government of Haiti from the beginning together to abolish the Haitian Army, which of course has been notorious for its lack of professionalism, for its long history of human rights abuses. The Haitian Government recognized, as did we and other countries, that no army was really necessary due to the lack of any kind of external threat. However, there clearly has been the need for a professional law enforcement entity.

Mr. Hamilton. But you are faced in 2 months with the United Nations pulling out, and the hope of maintaining security and order there rests with this committee?

Mr. GELBARD. That is what I was getting to. The Haitian Na-

tional Police is the body which is to carry on public security.

Mr. HAMILTON. You are telling me that if the \$5 million is not released, our training program collapses—

Mr. GELBARD. And there would be inadequate public security

forces to maintain that presence.

Mr. HAMILTON. There is some suggestion in the testimony that it might even have an impact on the orderly and safe withdrawal of the troops?

Mr. GELBARD. Yes, sir. We would also be concerned about the po-

tential adverse effect of illegal immigration.

Mr. HAMILTON. Thank you, Mr. Chairman. Chairman GILMAN. I recognize Mr. Bereuter for a motion.

Mr. BEREUTER. Mr. Chairman, I move that the committee, at a time to be determined by the chairman, after consultation with the Ranking Democratic Member, and provided that all members then present have had the opportunity to question the witnesses, close this hearing to the public pursuant to the provisions of Rule 4(b) of the committee on the grounds that the disclosure of the testimony, evidence, or other matters to be considered would endanger the national security.
Chairman GILMAN. Thank you, Mr. Bereuter.

The Chair would like to advise members that it is his understanding that this procedure is acceptable to our Minority. The Chair would like to advise the members that under rule 4(b) a majority of the committee must be present to approve this motion and a roll call vote is required.

Is there any debate on the motion?

Mr. BURTON. Reserving the right to object, one question. I don't think I will object, but I am very concerned. I think the public has a right to know if this Congress has been misled.

As I understand your concern, Mr. Hamilton raised the issue about American troop safety when they withdraw if this police force is not continued in their training. Is that the reason for the national security question?

Chairman GILMAN. Mr. Burton, our intention is not to go to a closed hearing at this time until we get into any confidential mat-

ters that should not be disclosed publicly.

Mr. Burton. All right. I will withdraw my objection.

Mr. ROHRABACHER. Mr. Chairman, it seems to me that what we are talking about is the political security of the Administration's decisions rather than the national security of the United States. I don't see any national security implications about this. We are talking about a political embarrassment to the Administration.

Chairman GILMAN. It may not be necessary to close, but if that question does arise, we want to be in a position to move in that

direction. Under the rules a roll call vote is-

Mr. KIM. What was the motion?

Mr. BEREUTER. My motion was to move that the committee, at a time to be determined by the chairman, after consultation with the Ranking Democratic Member, and provided that all members then present have had the opportunity to question the witnesses, close this hearing to the public, pursuant to provisions of rule 4(b) of the committee, on the grounds that the disclosure of the testimony, evidence, or other matters to be considered would endanger the national security.

Chairman GILMAN. On the motion, those in favor will vote aye;

those opposed will vote no. The clerk will call the roll.

The CLERK. Mr. Gilman. Chairman GILMAN. Aye.

The CLERK. Mr. Gilman votes yes.

Mr. Goodling.

Mr. GOODLING. Aye.

The CLERK. Mr. Goodling votes yes.

Mr. Leach.

Mr. LEACH. Aye.

The CLERK. Mr. Leach votes yes.

Mr. Roth.

Mr. ROTH. Aye.

The CLERK. Mr. Roth votes yes.

Mr. Hyde.

[No response.]

The CLERK. Mr. Bereuter.

Mr. BEREUTER. Aye.

The CLERK. Mr. Bereuter votes yes.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes yes.

Mr. Burton.

Mr. BURTON. I will vote aye with reservations.

The CLERK. Mr. Burton votes yes.

Mrs. Meyers.

Mrs. MEYERS. Yes.

The CLERK. Mrs. Meyers votes yes.

Mr. Gallegly. [No response.]

The CLERK. Ms. Ros-Lehtinen.

[No response.]

The CLERK. Mr. Ballenger.

Mr. BALLENGER. Aye.

The CLERK. Mr. Ballenger votes yes.

Mr. Rohrabacher.

Mr. ROHRABACHER. Aye with reservations. The CLERK. Mr. Rohrabacher votes yes.

Mr. Manzullo.

Mr. Manzullo. Aye.

The CLERK. Mr. Manzullo votes yes.

Mr. Royce.

Mr. ROYCE. Aye.

The CLERK. Mr. Royce votes yes.

Mr. King.

Mr. KING. Aye.

The CLERK. Mr. King votes yes.

Mr. Kim.

Mr. KIM. Aye.

The CLERK. Mr. Kim votes yes.

Mr. Brownback.

Mr. Brownback. Aye.

The CLERK. Mr. Brownback votes yes.

Mr. Funderburk. [No response.]

The CLERK. Mr. Chabot.

[No response.]

The CLERK. Mr. Sanford.

Mr. SANFORD. Aye.

The CLERK. Mr. Sanford votes yes.

Mr. Salmon.

Mr. Salmon. Aye.

The CLERK. Mr. Salmon votes yes.

Mr. Houghton.

Mr. HOUGHTON. Aye.

The CLERK. Mr. Houghton votes yes.

Mr. Campbell. [No response.]

The CLERK. Mr. Hamilton.

Mr. HAMILTON, Ave.

The CLERK. Mr. Hamilton votes yes.

Mr. Gejdenson.

Mr. GEJDENSON. Aye.

The CLERK. Mr. Gejdenson votes yes.

Mr. Lantos. [No response.]

The CLERK. Mr. Torricelli.

[No response.]

The CLERK. Mr. Berman.

[No response.]

The CLERK. Mr. Ackerman.

[No response.]

The CLERK. Mr. Johnston.

[No response.]

The CLERK. Mr. Engel.

Mr. ENGEL. Aye.

The CLERK. Mr. Engel votes yes.

Mr. Faleomavaega.

[No response.]

The CLERK. Mr. Martinez.

Mr. MARTINEZ. Aye.

The CLERK. Mr. Martinez votes yes.

Mr. Payne.

Mr. PAYNE. Aye.

The CLERK. Mr. Payne votes yes.

Mr. Andrews.

Mr. Andrews. Yes.

The CLERK. Mr. Andrews votes yes.

Mr. Menendez. [No response.]

The CLERK. Mr. Brown.

[No response.]

The CLERK. Ms. McKinney.

[No response.]

The CLERK. Mr. Hastings.

Mr. HASTINGS. Aye.

The CLERK. Mr. Hastings votes yes.

Mr. Wynn.

Mr. WYNN. Aye.

The CLERK. Mr. Wynn votes yes.

Mr. McNulty. [No response.]

The CLERK. Mr. Moran.

Mr. MORAN. Yes.

The CLERK. Mr. Moran votes yes.

Mr. Frazer.

Mr. Frazer. Yes.

The CLERK. Mr. Frazer votes yes.

Chairman GILMAN. The clerk will call the absentees.

The CLERK. Mr. Hyde.

[No response.]

The CLERK. Mr. Gallegly.

[No response.]

The CLERK. Ms. Ros-Lehtinen.

[No response.]

The CLERK. Mr. Funderburk.

[No response.]

The CLERK. Mr. Chabot.

[No response.]

The CLERK. Mr. Campbell.

[No response.]

The CLERK. Mr. Lantos.

[No response.]

The CLERK. Mr. Torricelli.

[No response.] The CLERK. Mr. Berman.

[No response.]

The CLERK. Mr. Ackerman. [No response.]

The CLERK. Mr. Johnston.

[No response.]

The CLERK, Mr. Faleomavaega. [No response.]

The CLERK. Mr. Menendez.

[No response.]

The CLERK. Mr. Brown.

[No response.]

The CLERK, Ms. McKinney.

[No response.]

The CLERK. Mr. McNulty.

[No response.]

Chairman GILMAN. How was Mr. Menendez recorded?

The CLERK. Not recorded.

Mr. MENENDEZ. Yes.

The CLERK, Mr. Menendez votes yes.

Chairman GILMAN. The clerk will read the tally.

The CLERK. On this vote there were 29 ayes and zero noes.

Chairman GILMAN. The motion is agreed to.

I wish to stress that we will not go into closed session now, but this will permit us to have a closed session if it is necessary to do so at a future time.

Mr. Goodling.

Mr. GOODLING. Mr. Chairman, I think he has finally sat down now, but there was a lobbyist that kept running back and forth all excited and wanted somebody's attention and I was afraid he was going to have a heart attack but I think he finally sat down. So I guess things are in order.

Chairman GILMAN. Mr. Roth.

Mr. ROTH. Thank you, Mr. Chairman.

Mr. Dobbins, I know this is a rather murky business, but as I interpret this, the heart of it is basically this: the FBI had evidence that these murders were linked to Aristide's regime and the State Department had this evidence but kept it hidden from Congress. The question is, why?

Mr. DOBBINS. Thank you.

I think it was publicly acknowledged by, as far as I know by State and that the FBI went down there because the murder was potentially linked to Aristide's regime. It was because the Minister of the Interior was potentially involved that we had information linking him that the FBI went down there and as I recall that was a matter of public record within 24 or 48 hours of this occurring.

So the reason the FBI was there was because they had no justice system, they had a potentially serious crime with potential links to the Government that was supposed to do something about it, and

the FBI was sent down there.

I really believe this was a matter of public record from March of last year. The FBI treated this, to my understanding, as a law enforcement-sensitive operation. As they indicated, they were not down there to collect intelligence or support American policy except in the sense that they were conducting an independent investigation. They did not brief me. I sought briefings and was told it was inappropriate at that stage, and I acquiesced in that as did other senior officials in Washington.

Mr. ROTH. So what you are basically saying is that you did not

know.

Mr. DOBBINS. Could I finish, because this is important, obviously. It was sensitive information from State Department officers in Port-au-Prince largely based on their contacts designed to facilitate that investigation, on how they thought it was going. I knew this information to be incomplete. I knew this information had not been confirmed by headquarters and I thought this information was in some respects probably inaccurate.

I did not think I as a State Department official should be briefing the Congress based on incomplete, potentially inaccurate, uncorroborated information on what another agency was doing with that, which incidentally that agency believed to be sensitive, but quite aside from that when that other agency was freely avail-

able.

Mr. Roth. There seems to be some misinterpretation. When General Raoul Cedras left Haiti, we gave him certain incentives; such

as agreeing to rent his real estate and so on. Are we still using

American taxpayers' money for that purpose?

Mr. DOBBINS. I believe the arrangement was, I can't recall, a year or something like that and I believe it is still under lease to us and that comes to an end.

Mr. ROTH. We gave him certain incentives to leave Haiti?

Mr. DOBBINS. In effect, yes. I think we are using it for some good purpose. Somebody in the Embassy is living in it.

Mr. Roth. Part of this was a payoff.

Now when Aristide said he was going to run for re-election, some of the people in the State Department sat down with him and they reasoned together. What I would like to know is—we can't have a charge of information being withheld from this Congress in the future, and you being under oath I know you will be frank with us—what kind of incentives, what kind of reasoning did we do with Aristide?

Mr. DOBBINS. First of all, Aristide did not say he was going to run again. Aristide was somewhat ambiguous about his intentions

which led to a good deal of concern.

We had had a conversation with him. This occurred and reoccurred so I am not clear exactly what instance, but the biggest flash point occurred the day after he met with Tony Lake. During the meeting with Mr. Lake, he made absolutely clear that he was leaving on February 7. He made it so clear that we were convinced. The next day he gave a public statement in which he answered some questions—

Mr. ROTH. But the question I have is-

Mr. DOBBINS. And there was a flutter of speculation based on his unwillingness to confirm that he was leaving and then 3 days later

he confirmed it. The General was-

Mr. ROTH. We paid off Cedras and the question is—so we have no misunderstanding in the future, you being there under oath we didn't pay off Aristide. Is that what you are telling this Congress?

Mr. DOBBINS. I know of no-

Mr. ROTH. You don't know of any, but you are not saying we

Mr. Dobbins. Given the line of questioning, I think I ought to confine myself to what I actually know. I know of no such thing and I think I would know and I am the responsible official so I think you can take that as fairly definitive.

Mr. ROTH. You were asked to leave the room during the discussion of the murder. Were you asked to leave the room when any

deals were made with Aristide?

Mr. DOBBINS. I don't believe there were any. Mr. ROTH. You are not answering the question.

Mr. DOBBINS. Well, I answered that question. There have been meetings with President Aristide at which I have not been present. I have no reason to believe that there was anything of the sort you suggest.

Mr. ROTH. Thank you very much. Chairman GILMAN. Mr. Hastings.

Mr. HASTINGS. Thank you very much, Mr. Chairman.

Mr. Dobbins, Ambassador, regarding the queries that have been put to you with reference to previous testimony, more specifically October 12, do you feel in any way that you gave at that time any inaccurate or unfounded information to the committee that was querying you at that time?

Mr. DOBBINS. No, sir, having reviewed my testimony on this point I find nothing inaccurate. I clearly, in retrospect I would have been better off suggesting that the FBI be directly queried on their

investigation.

Mr. HASTINGS. All right. And subsequent to the queries that were put to you on October 12 in the appropriate forum in the Intelligence Committee, the information that is being bandied about here today was provided to the Intelligence Committee; am I correct?

Mr. Dobbins. There were a set of questions and answers as well as written testimony which cover I think all of the questions that have been asked which were provided from the State Department

as well as from Justice, FBI, CIA, and DOD. Mr. HASTINGS. All right. I thank you.

Mr. Perry, how many similar type or analogous type investigations have you been involved in and/or your agency involved in worldwide?

Mr. PERRY. Congressman, this investigation was somewhat unique. There have been other investigations that have occurred

outside the United States.

Mr. HASTINGS. Let me make it clear, am I correct that the FBI's involvement came, one, at the suggestion of U.S. appropriate authorities; two, President Aristide, that the FBI be permitted to come to Haiti for the purposes of conducting an investigation?

Mr. PERRY. Yes, the Department of State, President Aristide looked for our involvement in that murder and the Attorney General and Director discussed it and we subsequently went down

there.

Mr. HASTINGS. And there were obstacles you have put forward in your prepared testimony that had zero to do with Aristide or any of his minions, more specifically the infrastructure, the culture, the lack of subpoena powers, the lack of an adequate judiciary, and any number of other concerns including the long history of violence and the unlikely possibility that witnesses who think they would be killed would come forward. All of those things were a part of obstacles; would you agree?

Mr. PERRY. Yes, Congressman.

Mr. HASTINGS. All right. That being the case, at some point you determined that you-meaning the FBI-had done all you could do in this investigation?

Mr. PERRY. Yes, Congressman. Mr. HASTINGS. When you did, did you have conclusory evidence that would withstand a judicial test, rather than suggesting, proving that Aristide had anything to do with any of the 20-plus murders that you may have investigated?

Mr. PERRY. That we could prove in court?

Mr. HASTINGS. Right.

Mr. PERRY. Congressman, I don't believe we did.

Mr. HASTINGS. All right. Did you have any such conclusory evidence other than the Interior Minister that validations apparently centered around, that anyone else, conclusory evidence that would stand up in court, that they participated in any political killing or political murder?

Mr. PERRY. No, Congressman.

Mr. HASTINGS. I have no further questions, Mr. Chairman.

Mr. Chairman, I would like the right to have the unanimous consent to include extraneous material and more specifically to include materials of someone who may very well have been involved in his own investigations of these matters and I would like the opportunity to provide that to the Chairman for his consideration.

Chairman GILMAN. Without objection.

Mr. ROHRABACHER. Reserving the right to object.

Chairman GILMAN. The gentleman reserves the right to object. Mr. ROHRABACHER. As a matter of courtesy I will not object, but as my colleague will know there was another situation where as a matter of courtesy we were expecting him not to object and he did object.

So I will withdraw my objection.

Chairman GILMAN. Thank you, Mr. Rohrabacher.

Mrs. Meyers.

Mrs. MEYERS. Thank you, Mr. Chairman.

What is the increase in the problem with boat people that has

taken place in the last 6 months?

Mr. DOBBINS. I believe it was the month before last a fairly high number of about a thousand people. It was, however, limited to two boats so the increase was from one to two boats over that 2-month period but it was also from 500 to a thousand.

You are not seeing the kind of small boat exodus that you saw a year-and-a-half ago. You are seeing organized commercial migrant smuggling. It is a serious problem. It is not as serious as the problem with Santo Domingo I think, but it is a serious problem. And since Bob follows this on a worldwide basis maybe he is the

one to answer it as a comparative thing.

Mr. GELBARD. As Ambassador Dobbins says, there is no question but what we are seeing now can be classified purely as alien smuggling. These are large shiploads of people who have paid smugglers to try to come to the United States. We believe that through the superb work of the Coast Guard we have been able to interdict and so far return all those who are attempting to enter the United

States illegally.

This is in contrast, as you are well aware, of the efforts before by many hundreds of small boatloads of individuals. This still represents a very small number of people, first, compared to what we saw in Haiti before during the time when President Aristide was in exile and people were attempting to flee Haiti at that time, and as Ambassador Dobbins says also, very small in comparison with the numbers who were trying to leave the Dominican Republic illegally or who are being smuggled from elsewhere in the world through Central America, through Mexico, or through other places in the Caribbean.

Mrs. MEYERS. The population of Haiti is 6 million?

Mr. GELBARD. Approximately 7 million.

Mrs. MEYERS. Seven million. And there is very little on the island that can support 7 million people; is that correct? I mean, the

level of poverty is very high?

Mr. GELBARD. The level of poverty is extremely high which accounts for the attempt the international community is trying to make working with the Haitian Government to improve the economic development situation.

Mrs. MEYERS. Is there a high level of drug use and smuggling

through Haiti?

Mr. GELBARD. As far as I am aware, there is an extremely low level of drug use. We have seen over time given Haiti's geographic situation the use of Haitian territory for drug transit. We saw that in significant measure prior to President Aristide's return and we have seen some continued use of Haitian territory during that time but at very low levels compared to, say, the Dominican Republic, once again.

Mrs. MEYERS. We are dealing, then, with a country here that es-

sentially is ungovernable at this point, really; would you say that? Mr. GELBARD. I would say that we have a country which in its 200 years of existence as a nation has not been able to develop, has not had the conditions to develop any institutional capabilities, any kind of institutions which would permit economic, social, and political development. President Aristide's election was the first democratic election which had ever really occurred. We have just now seen the second. We in the international community are certainly hoping to see the development of the economy, political and social institutions, too.

Mrs. MEYERS. What is the level of literacy in Haiti? How many

people can read?

Mr. GELBARD. I don't have a figure. I would be happy to get it for the record. I know it is extremely low.

The information referred to follows:

According to the 1982 census, the last official census done in Haiti, 37 percent of the population over 10 years of age was literate. In rural areas, only 28 percent was literate. The census failed to note, however, the degree of literacy or the language in which people were literate. Other estimates indicate literacy may be as low as 15 percent. Using a population base of approximately seven million, that would mean 1.0 to 2.5 million Haitians can read.

All Haitians use the Creole language in daily life. A small minority, primarily the wealthy, also speak French. A reform effort to reintroduce Creole as the medium of instruction in primary schools was hindered by a scarcity of books printed in Cre-ole and by perception in the upper and lower classes of French language skills as a key to material success. In some Haitian schools, children are taught in Creole until the fifth grade. When they enter the fifth grade, French is used as the language of instruction. Many students find the transition from Creole to French difficult.

Mrs. MEYERS. Do you think that the efforts that the United States is making in Haiti are worthwhile? Are we making any

progress? Are we going to make any progress?

Mr. GELBARD. I was our negotiator on Haiti in the previous Administration, as some of the Members of Congress are aware, in a different assignment. In my current position, I have been involved in certain aspects of Haitian policy and there is no question in my mind it is both my personal and professional opinion that the situation in Haiti required our intervention, it required the intervention of the international community, we did the right thing, and obviously in the situation where we have a country which has no institutional capabilities over the course of 200 years what is required is patience and time to achieve the goals that the entire international community and the Haitian people want.

But I firmly believe, as I am sure all my colleagues do, that it is fundamentally in the interest of the United States given the fact that Haiti is literally a neighbor of the United States, we share a territorial border, for us to have done what we did and for us to

continue to remain engaged in a serious and dedicated way.

Mrs. MEYERS. I think I want us to remain engaged in this area in some dedicated way. I just think that until we take some steps with the rest of the world community—I don't mean this as something we should mandate—but we should assist in some kind of population efforts, really serious population efforts and really serious educational and literacy efforts there or everything that we do is going to be wasted.

I don't mean that we should turn our backs and walk away from people. I just think that what we are doing right now we could still be doing in a hundred years and unless we resolve those basic problems of overpopulation, poverty, and literacy nothing is going

to change.

Mr. GELBARD. We fully concur with everything you have said and those are among some of the fundamental efforts on which the U.S. Government through the Agency for International Development, multilateral institutions, and other bilateral donors are engaged.

Mrs. MEYERS. Thank you, Mr. Chairman.

Chairman GILMAN. Mr. Frazer.

Mr. FRAZER. What has the State Department done to inform the Haitian Government of the U.S. Government's disapproval of the

incorporation of 1,400 IPSF members into the HNP?

Mr. GELBARD. We have on several occasions discussed at various levels with the Haitian Government our feeling that, as I said in my earlier testimony, that any additional candidates for the Haitian National Police need to meet minimum requirements, the minimum academic and professional requirements to become cadets in the police academy; and, second, those who have served as members of the IPSF, whether they are former members of the Haitian armed forces or the so-called Guantanamo trainees, need to be checked for the quality of their professional performance and their human rights performance during the time they have served as members of the IPSF. Our feeling is that only if they meet those criteria could they become candidates for the Haitian National Police.

Alternatively, though, as Ambassador Dobbins made reference to earlier, we are prepared to consider inclusion of such individuals if they have performed well professionally and in terms of their human rights performance in areas that would be less than full members of the Haitian National Police. For example, if there were adjunct forces established as part of the overall public security entity so that they could participate as traffic policemen or as static security guards.

Mr. FRAZER. Was this issue raised directly with President Aristide and/or President-elect Preval and what were their direct

responses?

Mr. GELBARD. I would have to defer to Ambassador Dobbins on

Mr. Dobbins. I believe the issue has been raised with Aristide and in more detail with the Minister of Justice. The issue, as I said, is a complex of separate issues involving different categories of people of which the integration at the higher, more senior levels is potentially the most important and in some ways the most troublesome. The response has been that the decisions about how to integrate them have not been fully taken, that they will take our views into account.

They do want training for most of these people and they understand that the training requires that they agree on who is to be trained. So this is an ongoing process of negotiation. I can try to provide you more detail, but that is all I have at my disposal at

the moment.

Mr. GELBARD. Congressman, if I could just add, we have a Memorandum of Understanding with the Government of Haiti regarding the issue of police training and the specific provisions regarding the rights and responsibilities of the Government of Haiti on the one hand. The Government of the United States on the other are as follows: The Government of Haiti, the MOU states, the Government of Haiti retains the sovereign right to make all final decisions with respect to the police, including organization, development, and training, while we retain the sovereign right to determine the conditions under which we will continue to make assistance available to permit that training. But of course as Ambassador Dobbins says, this is a matter of discussion and we are still working through this.

Mr. FRAZER. Thank you.

Chairman GILMAN. Thank you, Mr. Frazer.

Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman.

Mr. Perry, you said in your statement: "We met regularly in Port-au-Prince with representatives of the Embassy, U.S. military, and other relevant agencies to generally apprise them of the course of our investigation."

Did you or any member of the FBI ever talk to Ambassador Dob-

bins directly about the case?

Mr. PERRY. Directly about the case, did we ever talk to them?

Mr. Burton. Did you ever brief him or talk to him directly about the Bertin case?

Mr. PERRY. We talked in terms of our trip down there.

Mr. Burton. I am asking you the question about the Bertin murder. Did you or any member of the FBI ever talk to the Ambassador directly about that case?

Mr. PERRY. Yes.

Mr. BURTON. Ambassador Dobbins, I want to read to you what you said before my committee when I asked you this. You said, "The FBI has not briefed me or, as far as I know, anyone else in the Administration on their findings."

How do you square that with what we just heard from the FBI?

Mr. Dobbins. I think it squares perfectly.

I went down with the Associate Attorney General and the FBI. We took a plane trip down there. When I got there we met with

the FBI team to discuss the case, and I was asked to leave the room. On the trip down there our discussions were focused either on generalities or the specifics of our mission which were to remove some of these obstacles.

Mr. Burton. Ambassador, the FBI representative just said that he talked to you and briefed you directly and you said in your statement to me, "The FBI has not briefed me or, as far as I know,

anyone else in the Administration on their findings."

Mr. Dobbins. Perhaps we are in a semantic difference. I was excluded from what I considered the briefing. I asked Mr. Gelbard whether he had been briefed. He said no. I asked my colleague at the White House whether he could arrange a briefing. He called me back and he said, they don't believe it is appropriate.

As far as I am concerned-it wasn't complaining. My statement to you was not a complaint. It was a statement that the FBI was

compartmentalizing this information.

Mr. BURTON. You don't believe you were misleading the subcommittee and me as Chairman when you made that statement?
Mr. DOBBINS. I didn't intend to. That is all I can say. I had been

excluded from substantive briefings as a conscious matter of policy and therefore I did not believe that I could in good conscience brief

the committee on what the FBI was doing.

Mr. BURTON. I would think that most Members of Congress, regardless of party affiliation, would think if that statement were made to them that it certainly was misleading the Congress of the United States, and I hate to think that every time we have an ambassador or somebody appear before us that we are going to have to have him sworn in to be sure there is no equivocation when we are trying to get the facts about what is going on. We are pouring hundreds of millions of dollars and risking American lives in a place like Haiti and we ask you questions about what is going on in a murder of a top opposition party official in the middle of downtown Port-au-Prince at high noon and you say you don't know anything about it and you have not been briefed about it, you haven't talked to anybody about it and the FBI says they have briefed you and talked to you not once but many times. You didn't only say that, you said that nobody at the Embassy or anybody else in the Administration had been briefed on the findings.

Mr. DOBBINS. I said that I didn't know of anybody else in the Administration. I just recounted to you the people I had checked with. I didn't say I didn't know anything about the case, sir, I raised it

in my testimony at some length.

Mr. WAXMAN. Since I was part of that trip to Haiti—

Mr. BURTON. With all due respect, there was more than one occasion when the FBI talked to the Embassy. This isn't the only time. They talked to the Embassy many times. For the Ambassador to come before my subcommittee and say he didn't know anything about it and hasn't been briefed is almost a blatant misrepresentation or lie.

Mr. WAXMAN. Congressman, I just wanted to-there has been such a discussion about the trip down to Haiti that the three of us made and the meeting which I asked Ambassador Dobbins to be excluded from, if it would be helpful to the committee I would very

much like to lay out on the record what actually—

Mr. Burton. But we have a more important issue here and—

Mr. WAXMAN. I appreciate that.

Mr. BURTON. You knew you were going to talk about obstacles to the investigation with Aristide. Why in your statement in October and today do you suggest that the Haitians were cooperating?

Mr. DOBBINS. Based on our discussions with the Haitians, we concluded the best way to set up their own investigative unit. We urged that on them and on that day I was able to announce that we had successfully gotten their agreement. We urged this on them after extensive consultations with Senator Dole's staff and the negotiation of language in, I believe, the State Department appropriation which required such a unit be set up.

Mr. Burton. That is blue smoke because you wouldn't have gone to see him if they were cooperating. You knew they were not co-

operating. That was the purpose of the meeting.

Let me ask the FBI, Mr. Perry, a question. You were asked by the gentleman from Florida a while ago if there was any conclusive evidence that would hold up in court about whether or not Mr. Aristide or his close associates were involved in this assassina-

Let me put it a different way. You can't really make that kind of a statement because you are making a subjective judgment. You are not on a jury; you are not on a court. Let me ask you, did you have any evidence that Mr. Aristide or his close associates were involved in that assassination or any other political assassinations down there?

Mr. PERRY. Congressman, I just want to specify also that we were down there to do one investigation. That essentially was the

Bertin case and-

Mr. BURTON. Did you have any other information that would lead you to believe that any associate of Mr. Aristide or Mr. Aristide himself was involved in that?

Mr. PERRY. One of the areas that we were looking at was the political motivation-possible political motivation in the killing. We had information that people within the Government of Haiti might have information that would bear on that or possible involvement in that.

We were trying to proceed in terms of interviewing people within the Government of Haiti regarding those issues. We had information that that was an area that we needed to explore, source information of unknown reliability that would lead us in that direction.

Mr. BURTON. You did have some information that led you to be-

lieve he might be involved in it? Mr. PERRY. President Aristide?

Mr. BURTON. Or his close associates?

Mr. PERRY. It would have been those in the Government of Haiti.

Not President Aristide. No, sir.

Mr. Burton. Mr. Chairman, let me just end up by saying I hope that you will continue to keep a hold on that \$5 million, because they are putting 1,400 ex-soldiers and ill-trained partisans into the police force in Haiti. They already have uniforms. I believe they are being paid; and they are, in effect, part of that police force. Some of those people may have been implicated by some of the testimony in some of these assassinations, and for us to be using taxpayers' dollars to beef up a police force that has these kinds of thugs is

highly questionable.

I would like to add one more thing. I hope the Administration in the future and Mr. Dobbins in particular, when you come up here don't try to mislead the Congress and don't equivocate. If we ask you a question and you want to go into closed session to give us an answer, give us the answer, but don't tell us that something didn't happen when it did because we know damn well it was a lie.

Chairman GILMAN. Thank you, Mr. Burton. We will take your suggestion under advisement and will be consulting with our committee members before we undertake any further action subject to

approval by the committee.

Mr. Payne.

Mr. PAYNE. Thank you very much. I am subject to the approval of the committee?

Chairman GILMAN. Strike that from the record.

Mr. PAYNE. I didn't know why we are swearing people in here, and I didn't know what that meant.

Let me ask you a couple questions.

We have heard a lot of talk about how much money we have spent and how poorly this money has been used. Could you—perhaps one of you—just describe very briefly the conditions during the last year of the Cedras-Francois Government, what was happening, what was the human rights situation and the size of the army?

Mr. DOBBINS. I think the observers estimated that perhaps 5,000 people were killed in government-associated repression over a 3-year period, if I remember the figure correctly, which would be about 1,500 people in that category a year. So this was clearly an

exceptionally difficult and exceptionally repressive period.

In addition, toward the end there was a mass exodus of people fleeing Haiti, nearly 20,000 of whom ended up, as I recall, in Guan-

tanamo.

Mr. PAYNE. So we have got a situation where, in 3 years, 5,000 people are—say in the last year 1,500 people were killed. So far, we have been talking about a death—and every death is certainly serious. I don't think that we spent that much time at any hearing of the Western Hemisphere Committee during the last year compared to the amount of time that we spent here on this one killing for the 1,500 killings that happened during that last year.

Second, let me ask you a question, Mr. Perry. Were you invited to that Western Hemisphere meeting October 12—whenever it was. Did you testify? The hearing that has been referred to so much.

Mr. PERRY. No, sir.

Mr. PAYNE. OK. I just wonder if you would have been. Being the topic of the discussion, seems it would simplify matters if the Chairman had invited the FBI. You were doing the investigation. Right?

Mr. PERRY. The FBI was conducting the investigation on Bertin,

yes, sir.

Mr. PAYNE. It might have saved a lot of time today. Maybe it is an afterthought, but if I were chairing perhaps I would have thought about it, about the questions involved in the investigation.

It would seem to make sense to invite the FBI, but that is just my

Could you tell me about the section chiefs, the Chiefs 'd Section, as the 30-day reign before, and are they still in existence, and how did that happen if they are not?

Mr. Dobbins. Their functions were terminated, and they have

been replaced by elected officials.

Mr. PAYNE. Also, could you tell me the size of the army at that

time? Could you, during the past year or two?
Mr. DOBBINS. It was 7,000 on paper and 6,000 present for duty when the American forces arrived.

Mr. PAYNE. How many policemen have we trained so far?

Mr. Dobbins. I believe 3,500 have completed training, and 1,500 are in training.

Mr. PAYNE. 3,500 and 1,500.

Now, if we withheld money, it was indicated the money would be withheld, the academy would have to close down more or less and it would be difficult to continue. The number initially was higher than 5,000, that was estimated that we needed, right? I think they

talked initially about 7,000 or 8,000 policemen?

Mr. GELBARD. That is right, Congressman. But eventually the Haitian Government decided that it could not sustain the ability to provide salary payments for a much larger number, given the poverty of the country. So, on that basis, they came back to us and asked us to reduce the initial number of Haitian National Police to be trained.

Mr. PAYNE. And, actually, wouldn't it seem to make absolutely no sense for us to close down a process after investing the amount of money into it by withholding of the final funds? It is like a bridge that is three-quarters built.

Mr. GELBARD. We agree completely.

Mr. PAYNE. All right. I see my time has expired. The red light means your time is expired, so I guess I will have to stop.

Thank you, Mr. Chairman.

Chairman GILMAN. Thank you, Mr. Payne.

Mr. Goss.

Mr. Goss. Thank you, Mr. Chairman.

I am very concerned about the relationship of the new president, President Preval, and the new chief of the police, who is likely to be Mr. Celestin, a man who is having trouble getting confirmed by

the Haitian parliament.

There is some very interesting commentary in the New York Times in a recent article about that. Members of parliament, speaking anonymously for fear of retaliation, have complained that violence flourished under the management of the new chief, Colonel Celestin, and so forth. That is an area I want to take up because it is directly relevant to our investigation and our hopes.

I want to take up another issue—the reports about the commando-style assassinations reported by the OAS Ambassador Colin Granderson. I want to know what information we have on the asso-

ciation between those reports and the Bertin investigation.

But, in particular, I want to go to specifics with you now, if I may, and ask Ambassador Dobbins some direct questions. The first is, who has been the director of the Interim Public Security Force? Mr. DOBBINS. Major Danny Toussaint.

Mr. Goss. Has Mr. Toussaint been appointed to be the new director of the judicial police?

Mr. DOBBINS. So we understand.

Mr. Goss. Do the police have jurisdiction over the special inves-

tigation unit?

Mr. DOBBINS. It is not clear the unit had a direct line to the chief of police without going through any subordinate. That was under the old system, and I guess we have to answer that we don't know whether the new director would maintain that.

Mr. Goss. Do you think there is a possibility that Mr. Toussaint will have jurisdiction or some participation in the special investiga-

ion unit

Mr. Dobbins. Yes.

Mr. Goss. Is the special investigation unit charged with the investigation of political murders that have occurred in 1994 and subsequently?

Mr. Dobbins. Yes.

Mr. Goss. Do you have any evidence that Mr. Toussaint was in-

volved in any of the political violence?

Mr. DOBBINS. Mr. Congressman, testimony about any particular individual would be derived either from intelligence material or from sensitive law enforcement material or from other material

which I would recommend be gone into in closed session.

Mr. Goss. If you would decline to answer I would agree, on the degree of sensitivity. I would respect your judgment. And I would draw the conclusion that should your answer have been yes it would seem that we would be in a quandary about how we have somebody who may be linked up with violence doing the investigation of himself and his friends. That is an area of some great concern.

I say that and I will just signal that we will continue this conversation either in this committee in closed session or in other committees that will be dealing with this, because this is an area where we have said before that we are taking steps to weed out individuals who are suspected of violence; and it seems to me that if we get near the top of the chain we have got to be extra diligent in making sure that the record is very, very clear; and apparently it is not.

Thank you, Mr. Chairman.

Chairman GILMAN. Thank you, Mr. Goss.

Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman.

First of all, Mr. Chairman, I seek unanimous consent to include in the record at this point a communication from the State Department to Mr. Hamilton dated January 3, 1995.

Chairman GILMAN. Is that the letter we previously entered?

Mr. MORAN. I would ask staff.

Chairman GILMAN. All right. The letter is received. Do we have copies of it?

Mr. MORAN. I think you do. Chairman GILMAN. OK.

Mr. MORAN. They were at our desk. Apparently, it was just not formally put into the record.

Chairman GILMAN. Yes. Proceed.

Mr. Moran. Mr. Chairman, as I have sat here there has been a clear attempt to implicate, even directly accuse, President Aristide of being involved or perhaps even directing these murders. The fact is that we have been given absolutely no evidence that would cause any prosecutor to go into a court of trial in this country or obviously in Haiti in an attempt to make such a connection. It is as though you are charging President Nixon because Robert Kennedy got assassinated.

I don't see any tighter evidence than the motivation that was discussed. Obviously, you would pursue anybody that had any motivation, but under direct questioning the answer has been no, there is no connection. And I can understand why the attempt is being made, but I certainly think that it is wrong and irresponsible.

Chairman GILMAN. Mr. Moran, are you asking a question?

Mr. Moran. Now I am going to get to my question. That was the

The second issue though that has disturbed me is that, in addition to accusing President Aristide, Mr. Dobbins, our lead witness, was just accused of lying. I have the testimony that was given in a subcommittee of this committee, and it is clear that—at least in my mind-that Mr. Dobbins did not lie. He said that he has not been briefed by the FBI—excuse me, I will use the exact words: The FBI has not briefed me or, as far as I know, anybody else in the Administration on their findings. They are still conducting their investigation and as far as I know have not come to a conclu-

Clearly, he was briefed on the investigation itself but not on the

findings.

So, Mr. Dobbins' testimony appears to be entirely accurate and if I were he, I would certainly take offense at any suggestion that

it was not. We have not seen any testimony to that extent.

Now, a third issue that I want to bring up—it will be in the form of a question of the panelists—is if this \$5 million is withheld for training of the Haitian National Police who does it assist? It seems to me that the money being used to train the police is to avoid situations such as gave cause for this hearing today. We are attempting to professionalize them, in the words of the witnesses, to make sure that they are nonpartisan, that they are the type of police that we use and rely upon to provide our security in this country. We withhold the funds, we don't achieve that objective.

Now, I made two points as well as a question, and you can re-

spond to the other points if you would like to.

I would like to start with Mr. Waxman because, at one point, Mr. Waxman was interrupted before he could give an answer that I thought was pertinent. Mr. Waxman, would you like to address

that, representing the Department of Justice?

Mr. WAXMAN. Thank you. I would like to answer your direct question but also make the point and illuminate for the committee the context in which Ambassador Dobbins, Director Perry and I went down to Haiti on the weekend of the 4th of July and the purpose for meeting with President Aristide, and the incident in which Mr. Perry and I felt that there was a portion of a session that we had with the agents in the FBI command post that we preferred

he not attend. There have been so many references to it perhaps it would be helpful if I explain what happened.

Mr. Moran. Thank you. It was that answer that Mr. Burton in-

terrupted. I did want you to conclude that. Thank you.

Mr. Waxman. The FBI was asked to go down on an urgent basis and went down and was on the ground in Port-au-Prince to do the crime scene investigation within the day, by 5:30 the next morning. They had a full contingent set up to conduct an investigation in a country which at the time, by all accounts, had literally no means to do crime scene investigations, had no effective police structure, et cetera, et cetera.

By late June, 1995, the FBI had brought its investigation, which was organized in quite a methodical way, to the point where they felt it necessary and desirable to question certain members of the IPSF because other information they had gotten in the investigation suggested these 12 or 13 individuals may have information leading to conclusions about who committed these assassinations.

They conducted a few of those interviews of the IPSF, but some of the conditions that cropped up in connection with those investigations, those examinations, agents on the ground began to question whether or not they had the full support of the Haitian Government in what they were doing and also whether or not they were going to be allowed to continue freely to continue their investigation.

The Director of the FBI communicated those concerns to the Attorney General. The Attorney General asked me if I would go down, meet with the agents to determine what the problems were, and then meet with President Aristide in order to determine whether the FBI could conduct the kind of professional, nonpolitical law enforcement investigation that it believed it had been asked to do and the only kind of investigation that the Attorney General would support the use of her personnel in.

I met Bill Perry on that flight down there with Jim Dobbins, and on the flight down we talked about the FBI's perceptions of some of the roadblocks that appeared to have been placed in its efforts

to interview these IPSF officers.

When we got to Port-au-Prince and before we met with President Aristide, Bill Perry and I went to the FBI command post to talk with the agents, get to know them—it was my first trip to meet them in Haiti—and to learn firsthand from them whether they had concerns about their personal safety, and specifically what concerns they had about the extent to which their investigation was being blocked or hampered or could be helped in any way and also to find out from them, frankly, some fairly confidential information about the ongoing law enforcement investigation, the quality of their sources, the perceived safety of their sources, the absence of a witness protection program of any sort and what we could do perhaps to get one generated.

For that discussion I felt then and I feel now—and I know Director Perry agrees because we discussed it at the time—that it would be inappropriate—highly inappropriate to have a senior member of another agency of the United States that does not have law enforcement responsibilities to participate in that kind of a discussion, and I asked Ambassador Dobbins if he wouldn't mind going

to the embassy and letting us catch up with him after Bill and I had an opportunity to talk with the agents and the agents in

charge down there. We did that.

Following that meeting which Ambassador Dobbins did not attend, the three of us and Ambassador Swing met with President Aristide and some of his advisors in Haiti. I was the principal spokesman at that meeting, which is the only meeting I have had with President Aristide or anybody else in the Haitian Government on this subject.

I laid out for him the concerns—the great desire of the Attorney General that the FBI be allowed to continue its investigation to the point at which it could go no further and to do so in a thorough and impartial manner consistent with the way in which the FBI does investigations in the United States, recognizing that we have no compulsory process in Haiti, no witness protection program in Haiti, no means of obtaining search warrants, et cetera, et cetera.

President Aristide was very, very supportive of that.

I explained to him that in the course of trying to conduct these interviews of IPSF officers the agents were reporting that they had received communications from the Haitian Government that before the Bertin investigation could go further the FBI had to agree to investigate 20 other political assassinations that had occurred over the past few years and also that in contacting and interviewing Haitian Government employees and these IPSF officers or employees, that the FBI—since we were down there to assist the Haitian Government, the FBI should arrange these interviews through the Haitian Government and permit Haitian Government officials to sit in on the interviews.

We explained to President Aristide utterly unambiguously because we were concerned about not only the perception but the actuality of doing an impartial law enforcement investigation—that while we recognize that we were there to assist the Haitian Ministry of Justice to do an investigation, it could not do itself, we had to insist that when we wanted to contact Haitian Government officials we do so without prearrangement of the Haitian Government, without even telling the Haitian Government in advance who we were going to be interviewing and without any Haitian Govern-

ment officials present.

And, also, we respectfully declined to extend the FBI investigation to include 10, 20 or 30 or 40 other murderers. We explained we were requested to do one, we wanted to try to do a good job on

one, and that is what we wanted to limit ourselves to.

I think it is fair to say that there was agreement by President Aristide with the conditions that we had laid out for him on the terms under which the FBI investigation would continue; and in fact our agreement is memorialized in a letter that Ambassador Swing sent to President Aristide on July 11 the following week which, if it is not part of the record, I would offer to be part of the record if it would be of use to the committee. That I hope lays the groundwork for both the meeting from which Ambassador Dobbins was excluded and the nature of the concerns we had that prompted my visit with President Aristide and the resolution of those issues.

[The information referred to appears in the appendix.]

Mr. MORAN. It certainly doesn't sound conspiratorial. It sounds

understandable.

Mr. Chairman, obviously, I will not ask any other questions, but I wonder if we could get a quick response that was elicited from the other members if they have anything to add. They may not

want to add anything or respond to the question.

It is with regard to the \$5 million. Apparently, there is an assent the \$5 million is not going to achieve any of our mutual objectives if it is not used; and if it was used in fact it would not be particularly to the benefit of President Aristide but to the benefit of American policy to professionalize the police force. I assume that is consistent.

Mr. BURTON. Mr. Chairman, I don't want to interrupt my colleague from Virginia, but I have more questions that I have to ask, and I would like to have his questioning be terminated relatively

Mr. MORAN. How about now?

Mr. WAXMAN. I would just like to say, since I have the microphone, from the ICITAP perspective, the Department of Justice ICITAP must, when it goes into a foreign country training, be permitted to do so in a complete and impartial manner. We are actually quite proud of the police training that has gone on at the Haitian Police Academy to date. We would be very, very disappointed, to say the least, if we were not able to continue, at a minimum, the final 2 months of training which will get the Haitian National Police force up to the 5,000 level. I mean, I don't see what interest would be served-

Chairman GILMAN. Mr. Waxman, is the FBI prepared to return

to complete their investigation if the obstacles are withdrawn?

Mr. WAXMAN. Well, I will be sure to reserve to Bill Perry the FBI answer, but if I can just explain, Mr. Chairman-

Chairman GILMAN. I am asking you, is the Attorney General prepared to recommend the FBI further conduct its investigation if the

obstacles that you referred to are taken care of?

Mr. WAXMAN. The Attorney General has recommended and has decided that, given the nature of the obstacles as they exist nowand I hope you permit me to explain what they are, at least as we perceive them—the best course for the continuation of the Bertin investigation, and particularly FBI involvement, is for the FBI to provide support to a continued investigation of the Bertin investigation that is being conducted by the special investigations unit

under the supervision of the U.N. CIVPOL.

What caused the FBI to conclude that we can't really go productively any further is that after our meeting with President Aristide at which there was an agreement that the FBI could contact anybody in the government it wanted without pre-notice and without any involvement of the Haitian Government, a set of lawyers emerged purporting to represent the 13 individuals that the FBI wanted to interview. The lawyers indicated that they would be pleased to have their clients interviewed by the FBI but only if there was a transcript of the interviews, if the lawyer, the same lawyer, was present for all of these interviews, the questions were submitted in advance, a number of conditions which—and I will let

Mr. Perry speak to it—the FBI felt were not consistent with the

kind of professional investigation it wanted to conduct.

The lawyers all represented that they were private lawyers being paid to represent those private individuals and that they had no connection with and were not taking direction from the Haitian

Mr. BURTON. Would the Chairman yield? Would the gentleman

yield on that?

Chairman GILMAN. Be pleased to.

Mr. Burton. It is my understanding that those legal fees were being paid by the Haitian Government. If that is the case, why would you say they were independent of the Haitian Government? Mr. GEJDENSON. Does the gentleman have evidence to that na-

ture?

Chairman GILMAN. Regular order.

The gentleman has yielded to Mr. Burton for a question, and let's

Mr. Burton. Mr. Dobbins, did you ever see cable transmissions to the effect that those legal fees were paid for by the Haitian Gov-

Mr. DOBBINS. I think they were.

Mr. Burton. I rest my case. For you to say they were independent of the Haitian Government, these 13 people are being defended

by the Haitian Government itself in these assassinations.

Mr. WAXMAN. I don't want to get into a quibble with the Congressman. We drew a distinction when we met with President Aristide because it is a distinction that we honor in this country. In our criminal justice system, for example, the government pays for the defense of most defendants in this country, but they owe their fiduciary responsibility to-

Mr. BURTON. Well, if I might interrupt briefly.

Chairman GILMAN. Mr. Burton, you have an opportunity for a

second round.

Mr. Burton. But this is relevant at this particular time, because he just made the point that these cases that were being tried were independent of the government. But the government was paying the legal fees to defend these people who were accused of murder, political assassinations.

Now my question is, why would the government be paying the

legal fees of these people if they were not somewhat involved?

Mr. Waxman, Mr. Chairman, can I finish answering your question?

Chairman GILMAN. Mr. Moran's time has expired.

And, Mr. Waxman, we are going to ask you if you will put on the record for us, submit to the record, the names of the attorneys who were involved at the time that you were having your discussions with Mr. Aristide.

Mr. WAXMAN. We would surely do that.

Chairman GILMAN. And Mr. Bereuter is recognized. [The information referred to appears in the appendix.]

Mr. WAXMAN. Can I just say, Mr. Chairman, I had not yet finished the answer to the question you asked me, but I would be pleased to at an appropriate time.

Chairman GILMAN, Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman.

I have a line of questioning, Mr. Dobbins, related to the death of Madam Durocher Bertin. If you could answer as concisely as you can, consistent with accuracy, I would appreciate it.

The media reported and the State Department has confirmed that before Madam Bertin was killed, the U.S. military uncovered a plot to kill her. As a matter of fact, the committee now has obtained a letter dated March 22, 6 days before the killing, in which Major General George Fisher informed Haiti's defense—Haiti's justice minister about a credible plot to kill Madam Bertin.

My first question: Did the Embassy consider the Interior Min-

ister Beaubrun to be seriously implicated in the plot?

Mr. DOBBINS. They thought that the allegation was a very serious one that needed to be looked into. So I think the answer is potentially yes.

Mr. BEREUTER. And it was specifically concern about the Interior

Minister?

Mr. DOBBINS. At that stage, as I recall, the only government official that was alleged to be implicated was the Minister of the Interior.

Mr. Bereuter. Did President Aristide look into the Interior Minister's—Mr. Beaubrun's—role in the foiled plot?

Mr. Dobbins. He told us that he had looked into it and that he

believed that the charge was unsubstantiated.

Mr. BEREUTER. And in fact that is true, that on March 23, the day after the Major General Fisher sent the letter, according to a chronology of events, President Aristide tells Major General Fisher and Ambassador William Swing that he has looked into Beaubrun's involvement in the Bertin plot and concluded that the Interior Ministry was not involved. The Justice Minister, who was supposed to be investigating, apparently didn't know that the Moise brothers were being held in a police station at the time, and so that day Ambassador Swing cabled the State Department suggesting calls to Aristide from senior Washington officials to press for an inquiry.

Are you aware, Ambassador Dobbins, that Madam Bertin's husband has said that his murdered wife was never warned explicitly

of the murder plot against her?

Mr. DOBBINS. Yes.

Mr. BEREUTER. A fact that was recently confirmed before members of this committee staff by a U.N. official who met with Madam Bertin several days before she was killed.

Did the Embassy or the Multinational Force, Ambassador Dobbins, confirm with Mrs. Bertin directly that the Haitian officials

had warned her of a plot to kill her?

Mr. DOBBINS. I believe that the force commander, in consultation with the Ambassador, decided that it was the Government of Haiti's responsibility to convey the warning, that they asked them to do so, were told that they would do so.

I believe they were also told that they had done so, and there's

clearly a conflict there.

Mrs. Bertin's husband and I believe another relative—there were subsequent conversations between Bertin and the Minister of Justice. No one else was present at them. I think there were two. The Minister of Justice maintained he conveyed the warning. Mrs. Bertin's relatives, who were not present but who talked to her

afterward, say that he didn't.

Mr. Bereuter. If in fact a witness suggested to the U.S. military that in fact the Interior Minister was implicated, directly ordering assassination of Madam Bertin, doesn't it seem strange and derelict in our responsibilities that we didn't convey that warning directly to Madam Bertin rather than going through the government, a high public official of which it was said was the assassination implicator?

Mr. DOBBINS. I think in the aftermath of the incident, instructions were sent to make sure that any—in similar situations the warning was conveyed directly as well as through the government.

Mr. BEREUTER. I think that is an understatement. Did any U.S. agency inquire whether the Interior Minister or the Justice Minister, who failed to fully warn Madam Bertin of the impending assassination, were involved in the conspiracy to murder Madam Bertin?

Have we investigated whether or not the Interior Ministry or the Justice Minister, the Justice Minister having failed to warn Mrs. Bertin of the impending assassination, whether or not they were

implicated in the assassination plot?

Mr. Perry. The conspiracy to assassinate, the one you talked about, Congressman, before the Bertin investigation, was not an investigation which we conducted in the FBI. We actually conducted the investigation of the subsequent murder.

Mr. BEREUTER. In fact, Mr. Perry, did you polygraph the people

who were implicated in the assassination attempt?

Mr. PERRY. There were polygraphs conducted, Congressman.

Mr. Bereuter. Do you consider that a lead?

Mr. PERRY. To polygraph, yes, sir.

Mr. BEREUTER. And in fact did you polygraph the Justice Minister?

Mr. PERRY. No, Congressman, we did not.

Mr. BEREUTER. Did you polygraph the Interior Minister?

Mr. PERRY. No, Congressman, we did not.

Mr. BEREUTER. Why not, when they were implicated by the letter and information coming to Major General Fisher, the commanding

general of the multilateral force?

Mr. PERRY. We had made attempts to interview the Justice Minister or the Minister of the Interior early on in the investigation, but we did not do that because of conditions that were set up by the government, by government officials in Haiti regarding that interview.

We conducted interviews of the people that were incarcerated in that conspiracy plot to see if there was any connection with the

subsequent murder of Bertin.

Mr. BEREUTER. I should correct my statement; the letter to Major General Fisher implicated only the Interior Ministry, not the Justice Minister. But if the Interior Minister, Mr. Beaubrun's role, was an FBI lead in March, why wasn't this explained to Mr. Burton's subcommittee in October when he asked if there were any leads?

Mr. DOBBINS. You're asking me? Mr. BEREUTER. Ambassador Dobbins. Mr. DOBBINS. The fact of the plot that the minister was allegedly involved in was a matter of public knowledge which had been commented on in the open by the State Department, among others, as I recall, and there was no subsequent information other than what was in the public record, that I was aware of, that linked that to the actual murder.

Mr. BEREUTER. But, Ambassador Dobbins, cables were sent to the State Department on March 22 and then on March 23 about the letter that Major General Fisher had sent. In addition, Ambassador Swing suggested to the State Department on March 23 that high-level calls be made to Aristide by senior Washington officials to press for an inquiry. So you knew, it seems to me, by reading

those cables——

Mr. DOBBINS. I guess, Congressman, let me say, the FBI was sent down there because the murder had taken place in the context of an already existing alleged plot, which potentially involved the Minister of Interior and which, within 24 hours of the FBI's dispatch, was a matter of public record; in other words, that the Minister of Interior had potentially been involved in a plot to murder this woman a week before she was murdered was then public knowledge.

Now, my understanding is that the FBI's investigation did not turn up any information which linked the minister or that earlier plot to the actual plot which killed her. So I had no new information on that minister and his involvement at that time, and indeed today. I didn't have any information that hadn't been put out to the

press in March.

Mr. BEREUTER. I do think that one result of—whether or not Congress has been fully informed, it is clear that a woman is dead in Haiti because we didn't inform the proper people, including the

lady, about the alleged assassination attempt.

Mr. Dobbins. Mr. Congressman, that may be true, but it depends on whether you believe the Minister of Justice or Madam Bertin's relatives or whether Madam Bertin told her relatives. It may be true, I'm not disputing that it may be true, and because it may be

true, it's not going to happen that way again.

Mr. BEREUTER. Of course it is not just the relatives. We have a man who gives the details of the person who was a triggerman, hired by the Interior Minister to make the assassination, that came to the attention of Major General Fisher. General Fisher relayed that properly, and Ambassador Swing seems to have properly conveyed that information to the State Department and made suggestions about what should happen thereafter.

Mr. DOBBINS. And that happened; all of that happened.

Mr. Bereuter. But the target for the assassination we notified through the Government of Haiti, of all things.

I cannot pursue cable traffic any further without violating classi-

fication, Mr. Chairman, so I yield my time. Chairman GILMAN. Thank you, Mr. Bereuter.

Mr. Gejdenson.

Mr. GEJDENSON. Thank you, Mr. Chairman.

Let me just say that I appreciate the work that some of my colleagues on the other side and this side are doing to try and make sure that the process toward improving the democracy in Haiti

moves forward. And clearly any government or government officials

involved in political murders threatens a democracy.

But, you know, I think I am somewhat stunned at times, and I remember what happened in the debate in Congress when the democracy in Chile was removed by a general, a number of people died and disappeared, and that was kind of defended as the process toward ending communism in Chile, moving toward democracy. I wouldn't do that here.

But I do think that it is important to look at this record and understand a couple of things. I sometimes get the sense from some of my colleagues on the other side, not Mr. Bereuter, but some of my other colleagues on the other side, that they are frustrated that

there was actually an election in Haiti.

Am I correct, Haiti has been free from about 1800, became independent early 1800's; is that correct?

Mr. Dobbins. 1804, I think.

Mr. GEJDENSON. And how many times has been there a free election where the same individual didn't just get reelected or reappointed—has it ever happened before?

Mr. Dobbins, 1990.

Mr. GEJDENSON. 1990. So now we have had another election, and prior to that, from 1800, it never happened.

Mr. DOBBINS. Don't believe so.

Mr. GEJDENSON. So we had Mr. Aristide get elected in what you consider basically a fair election?

Mr. DOBBINS. Right.

Mr. GEJDENSON. And you believe that this election was basically a fair election?

Mr. Dobbins. It wasn't perfect, but it was free and as fair as—

Mr. GEJDENSON. Elections here aren't perfect either. There is now an investigation into whether the Speaker of the House used his resources from a nonprofit to aid his political process. So no elections are perfect.

Let me ask you this. The other question then becomes, it seems to me, do we ensure a greater likelihood of a better process in the future by terminating the police training funds and ending the program, or do we improve the likelihood of a better election in the

future by continuing the police training funds?

Mr. DOBBINS. I think we need to continue the funds, but I think we need to continue them based on an understanding with the Government of Haiti of what they're going to be used for, and I think in my testimony, and Bob Gelbard's, we made clear that that understanding has to be fairly clear and fairly carefully drawn, and it certainly excludes harboring criminals in that police department.

Mr. GEJDENSON. And you think you can get that agreement? Mr. DOBBINS. I hope so. I think we've made a good deal of progress in this direction over the last year. I think we can con-

tinue to do so.

Mr. GEJDENSON. And the other thing I look for here is alternatives to the current path. I mean if we are going to establish democracy over the long haul here, it seems to me the most important thing in this process, obviously, is to make sure that political assassinations end, that there is a political process where people who get elected and finish their term then stand down.

So this was actually a significant step this time, because the past President could have made the argument he didn't get his whole term because he was removed and could have tried to argue for a

longer period. He didn't do that at our request, I'm sure.

Are there other things we can do to help try to ensure the democratic institutions are built in Haiti? I understand the need to focus on those who have been killed, whether it was in Haiti or Chile or Cuba or any place else. We are against political assassinations. I think that is a bipartisan desire.

What are the things we can do to make sure that democratic institutions are furthered? We took a step forward here because of the courage of the President of the United States. That shouldn't

be diminished. What can we do more?

Mr. Dobbins. Maybe my colleagues want to add something. I think by this intervention and by the assistance we provided, we've given Haiti a chance to turn a corner, make a difference and change its society. We can't do more than that. We can continue to do that, but that's all we can do, and it's going to be their decisions which determine whether they take that opportunity.

Mr. GELBARD. If I could add to that, Congressman, as I've said earlier on various occasions in the course of this hearing, historically there are no democratic institutions in Haiti. We are working really from the ground up. We have only been training the police

for 1 year.

The idea of establishing an apolitical, objectively selected, carefully selected police force, is innovative in Haiti. There is no justice sector, per se. I believe that the core of any democracy is really the justice sector. Democratic, community-oriented police, judiciary, penal institutions, and the kind of legal framework that allows for those entities to operate in, it gives the people confidence that they can operate in.

We are just beginning to work with the Haitian people and the Haitian Government to try to make these things a reality. So are other countries and other multilateral institutions. Time is obvi-

ously required.

But—and this goes back to what I was hoping to answer to Congressman Moran's question—Haiti is a neighbor of the United

States, literally. It borders on the U.S. territorial sea.

We need to be able to have democratic prosperous neighbors. To do that, we need to be engaged over the long haul. We need to be able to assure that they have the kinds of democratic, political, social, economic institutions that allow that country to prosper. It's in our interest in every way possible, so we need to stay engaged.

Mr. GEJDENSON. Thank you. Chairman GILMAN. Mr. Leach.

Mr. LEACH. I just want to return to one old point and raise a new

There is a distinction raised at a particular meeting that the Ambassador was apparently excluded from because he didn't need to know, and it was his term of art. Frankly, in American law enforcement there is a lot of confidentiality, that is always the case, and it is a very important precept.

Now, in law enforcement in another country where you are

brought in as another party, it is a very different circumstance.

And I raise this because I am just sitting here and listening to the testimony. It appears to me that the case that the panel, in tandem in a sense, is making is that the U.S. Ambassador, representing the Department of State, was excluded from certain knowledge that I assume would be very relevant to his job performance, and in being excluded, there is a distinction between need to know and a considered decision to refuse or to be ordered to refuse to learn, and that distinction is a very large one.

There is an issue here, for example, that Mr. Bereuter has raised, that is extremely profound, and that relates to a warning that might have gone to an individual citizen that might have

saved her life.

Presumably, if the Department of State had had certain information, A, about a particular incident, but B, about a pattern of operation within a government, they might have well gone directly to the individual instead of to the government, and so I think it is a

direct relationship kind of circumstance.

So one of the questions is, as we are training people to do police functions, do we need to train the Department of State about who to warn and how to warn in particular circumstances? And that is a very interesting question and something I think the Department ought to think through, because there are situations like Haiti all around the world. What are the responsibilities of the Department of State in warning individuals from which intelligence or police information flows through?

I only raise this because now and again in foreign policy, and in all life, there are circumstances where people choose not to know in order not to be accountable, and I am sitting here wondering if that is part of the case here or whether the government itself chose for the individuals that they shouldn't learn because it would put

them in a more delicate position.

And I have to tell you, as someone who comes from the Department of State, that I was brought up in an era where the U.S. Ambassador was to be the principal representative of all the U.S. Government, the Department of Justice abroad, as well as the Department of State abroad. And I am really perplexed at this notion that Ambassador Dobbins can appear to the U.S. Congress and say I was not briefed because I was excluded from a briefing. I find that preposterous, and I would hope both the Justice Department and the State Department would think both of those two issues more seriously through.

Mr. WAXMAN. Could I—Mr. LEACH. Very briefly.

Mr. WAXMAN. I didn't know if you wanted a response or not. A lot of what you've said I think is really right on target and addresses some of the concerns and ambiguities that existed in this situation.

Let me just say first, Congressman, the incident of warning Madam Bertin was something that occurred prior to any FBI or Justice Department involvement, so we can't really speak to that. The particular—I don't want the committee to infer from my statement that Mr. Perry and I asked Mr. Dobbins to please not participate in our meeting when we went down there to meet with the station people, to a broader statement that the FBI thought it was

operating in an environment in Haiti where it should not share any information with the Ambassador, the Deputy Chief of Mission or other relevant personnel in the Embassy. That was not at all the case.

It is true that—and you will certainly appreciate from your prior experience—that the FBI does not have intelligence gathering or dissemination functions abroad, except in extremely narrow circumstances, and they don't apply here. They were sent down to do a law enforcement investigation and to conduct one in an environment very different than in the United States, of course, because they didn't have the assistance of prosecutors and courts, et cetera, and also didn't speak the language and didn't have any contacts. And in order to enlist the support of Embassy personnel, the U.S. military there and other agencies that were down there, the FBI agents did provide regular briefings to Embassy personnel and other U.S. Government personnel on the course of the investigation.

That fact is not in any way, I suggest, inconsistent with the concerns I had about Ambassador Dobbins from Washington coming and sitting and listening to the particular questions I wanted to

ask my-

Mr. LEACH. Is it inconsistent with Ambassador Dobbins' testimony to the subcommittee? I mean, he has suggested that neither he nor anyone that he knew of was briefed. You are suggesting that the Embassy was continually briefed, which means the State Department was continually briefed, which means that he must have known.

Mr. WAXMAN. Well, I—on the ultimate—

Mr. LEACH. Something more than was revealed in a query before

a subcommittee.

Mr. WAXMAN. On the ultimate issue of how much information Ambassador Dobbins personally had, I have no information to relate to the committee other than I've read the cables that your staff has seen, and Mr. Dobbins and I have had a limited number of communications ourselves.

Mr. LEACH. Fair enough.

Mr. WAXMAN. Let me—if I may just finish—it is fair to say that there were frequent communications and exchanges of information in Port-au-Prince which were not in any way mirrored in Washington, because there was no law enforcement need to do so. I don't want to give the committee the misleading impression that there was a free exchange of information, because there was and remains certain information in the FBI's law enforcement investigation that would be, in its view, very improper to relate, even on the ground.

Mr. LEACH. My time is really very limited.

Mr. WAXMAN. I'm sorry, I see I've taken most of it.

Mr. LEACH. Let me just return to my second question very briefly, and let me say, as someone who frankly believes our policy has been more successful than unsuccessful in Haiti, in that things have gone better than they might well have gone and that that is a larger issue that we have to deal with, but I think it's important that we also ask a comment from the other side's perspective, and I'd like to particularly ask this of Mr. Perry.

I have before me a press release from the counsel to the Government of Haiti in which the following statements are made. The counsel noted a long-standing vendetta and smear campaign carried out against accused Haitian officials by certain State Department and CIA personnel. The counsel also noted that much of the old information against them which was passed on to the FBI came from the same persons who gave the CIA false information about President Aristide.

The counsel also said that the FBI, in briefing Haitian investigators 2 weeks ago on their results, emphasized repeatedly that the accusations were only that, bare allegations, that the FBI had no supporting evidence, that the FBI did not know whether the accusers had an ax to grind or were lying, that the FBI told the Haitian Government that if these accusers might be lying, if they were, then the accused were wholly innocent people.

My question to you is, is the counsel to the Government of Haiti correct? For example, is all of this simply a vendetta and smear campaign carried out against the accused Haitian officials by certain State Department and CIA personnel? Is that valid in your

judgment, Mr. Perry?
Mr. PERRY. No, sir, I believe we were pursuing an investigation and had information and were looking to interview and conduct further investigation toward individuals who were within the Gov-

ernment of Haiti.

Mr. LEACH. And so this characterization in total, do you think this is a fair characterization, this press release from the counsel, or is this characterization about what you, the FBI, told Haitian investigators 2 weeks ago, was that a valid characterization of what

the FBI told Haitian officials?

Mr. PERRY. I'm not exactly clear on—I'm not familiar with that. But we were proceeding along, and we had not completed our investigation. We were still pursuing the investigation. There's still work to be done. And that's what we turned over and told them that, in terms of a law enforcement entity proceeding on the investigative path.

Mr. LEACH. I appreciate that.

I will just tell you, as someone who's sitting here and trying to bring all these facts together, I mean I personally think that this Administration has a credible case, that they had a policy that has

worked better than many of us suspected it might.

On the other hand, it appears in this particular instance that there is somehow a letdown of the guard that didn't work well, and I think this Congress has every reason to be concerned. And so, somehow, we've got to tie all of that together in a judgmental way. And you know, I think we're all left in a little bit of a quandary.

Thank you.

Chairman GILMAN. Thank you, Mr. Leach.

We'll proceed with the second round of questions. Mr. Perry, did

the FBI's findings link the Bertin killing to other killings?

Mr. PERRY. There was linkage between the Bertin killing and other killings. However, the FBI just investigated the Bertin killing.

Chairman GILMAN. Was that linkage reported to the State De-

partment or to our Embassy in Haiti?

Mr. PERRY. Yes, it was.

Chairman GILMAN. When was that report made?

Mr. PERRY. I believe sometime in June. No, sometime in July, I believe, Congressman.

Chairman GILMAN. And, Mr. Dobbins, were you familiar with that report of the linkage of the Bertin killing to other killings?

Mr. DOBBINS. I assume I've probably seen all of the reports that came from the Embassy, and so I'm sure that the one you referred

to is among those that I've seen.

I alluded in my testimony, my own volunteered testimony, to the fact that there had been 20 cases that fell into this category. So the fact that this was a broader phenomenon is not something that we sought to disguise. Quite the contrary, we sought to allude to it and to indicate that it needed attention. We insisted that this special investigative unit be set up not just for the Bertin case but for the whole range of cases that fell into this category.

Now, in terms of possible evidence linking them in a physical evidentiary sense, I had seen State Department reports which were not corroborated here. I had sought briefings here. I had not gotten it. I had not gotten the full information. The question that was given to me is, has the FBI found anything? And my answer to

that was to say they haven't briefed me.

Chairman GILMAN. Ambassador Dobbins, did you make a specific

request to the Attorney General for such briefing?

Mr. DOBBINS. I made requests to the White House to arrange interagency briefings so that the relevant agencies could sit down and be updated on the case.

Chairman GILMAN. Mr. Waxman, were you—Mr. Dobbins. Could I finish, Mr. Chairman?

Chairman GILMAN. Let me pursue those for a minute. Mr. Waxman, were you familiar with those requests?

Mr. Waxman. The only request that I am familiar with, the only direct request for a briefing on the FBI findings was communicated to me by either Ambassador Dobbins or Mr. Clarke of the National Security Council staff sometime in mid-October, and which was at a time in which we were prepared to recommend that the investigation be transferred. And pursuant to that request we arranged a classified briefing for Mr. Dobbins and for Mr. Clarke of the NSC staff within a few days. That occurred in mid-October. Prior to that, I do not recall any requests being made of me for a substantive briefing of Mr. Dobbins or anybody else in Washington on the merits of the Bertin investigation.

Mr. DOBBINS. Could I complete my answer?

Chairman GILMAN. Mr. Dobbins, when did you make your request to the White House for such a briefing?

Mr. DOBBINS. I made the requests, I believe, on several occasions

in the period from, say, April or May through September.

Chairman GILMAN. Did the White House respond to your requests?

Mr. Dobbins. Yes, I was told—I can't remember the exact words, but the upshot of it was that they would prefer not to, that they regard this as sensitive law enforcement information, and since the investigation is still continuing, they would prefer not to brief it more widely.

Chairman GILMAN. And, Mr. Dobbins, do you recall whether the Embassy regarded the Haitian Government's preconditions for interviewing 13 Haitian officials by the FBI as legitimate or merely designed to frustrate the FBI's investigation? I'm asking you if you

recall the cable traffic with regard to those.

Mr. Dobbins. I don't recall. I mean, I think that our general assessment—we were told that the Haitian constitution required this. Now, the case was a somewhat unique one. It's the only time I know of a foreign law enforcement agency operating in Haiti. We were never able to find any reference in the law or constitution which required it.

The argument that since the investigation wasn't being conducted under Haitian law and so, since they didn't have the protection of Haitian law, they should have some protection, was not entirely invalid, but it also wasn't entirely persuasive. We reluctantly accepted this condition as a basis for continuing, and we've given

you the correspondence which sets this out.

Chairman GILMAN. Did the Embassy report to you that this was

a major sticking point in our relationships?

Mr. DOBBINS. No. They reported it as a major obstacle to getting the investigation continuing. That's why we went down there to break it loose. I don't recall it being reported otherwise. But your staff is nodding no. Maybe there's a cable; and, if so, I can—

Chairman GILMAN. Mr. Payne.

Mr. PAYNE. On the meeting that you said that was held there, it was indicated that you were not briefed. From what I'm trying to put this together, the investigation was ongoing? Therefore—correct me if I'm wrong. Therefore, there were no conclusions? This is a continuing, evolving situation. Do you have the answers today? I mean, do you know conclusively that you could have someone indicted and convicted today?

Mr. Perry. It is not conclusive with regard to an indictment and

conviction. No, sir, it's not.

Mr. PAYNE. Therefore, all this time about whether it was briefed or not briefed on conclusions seems to be just a real waste of a lot of time, because it's continuing, evolving. The investigation is continuing, correct?

Mr. Perry. That's correct.

Mr. PAYNE. Now, it was talked about difficulty in ascertaining information. Is there any comparable agency in Haiti that would interface with the FBI, that could do the types of things that you do and have the kinds of skills and the equipment and know-how that could make for a simple, easy investigation?

Mr. PERRY. I'm not very familiar with the situation in terms of

the police force in Haiti as to their capabilities or otherwise. Mr. PAYNE. Do they have any investigative agencies at all?

Mr. PERRY. Yes, sir.

Mr. Payne. They have detectives and people that try to follow up the same way that the FBI would do here-

Mr. PERRY. Well, the special-Mr. PAYNE.—at the same level?

Mr. Perry. The special investigative unit was formed to do that,

Mr. PAYNE. But it wasn't there previously?

Mr. PERRY. No, it was not, and I'm not familiar enough with the

police department.

Mr. GELBARD. If I could just add, Congressman, the special investigations unit was just set up, and it was set up specifically at the request of the U.S. Government so that they would, indeed, have a capability to investigate crimes of this nature. Prior to that,

there was no real investigative capability.

Mr. PAYNE. I guess if you went to any other place, you would more or less run into difficulty. If you went to part of the Soviet Union to do an investigation on some alleged assassination, without having the infrastructure, the similar situations that are there in Haiti, you would probably find the same frustrations in trying to put things together.

Mr. PERRY. Yes, sir, you would want such infrastructure.

Mr. PAYNE. And matter of fact, would you be surprised if it was an easy investigation? Just the reverse.

Mr. PERRY. That's tough.

Mr. PAYNE. I mean, everyone seems so surprised——

Mr. PERRY. You never can tell, sometimes, how an investigation

will go.

Mr. PAYNE. Yes, everyone is so surprised that it is a difficult investigation. And that is what I am kind of surprised, that everyone is surprised.

In your investigation have you investigated any of the activities of the alleged victim and her family and activities that they may have been allegedly involved with?

Mr. Perry. Yes, Congressman, we did look at that. We looked at

motivations such as that.

Mr. PAYNE. And there has been some rumor that there may have been in the family of this person—that in other words it didn't necessarily and specifically have to be a political person. The person just happened to be a candidate, but that you don't necessarily have to conclude that the killing had to be politically motivated.

Mr. Perry. You don't have to—we looked at many motivations,

and we explored those motivations.

Mr. PAYNE. Were there any truth to any of the other rumors?

Mr. Perry. We have not established the murder of Bertin in any motivation.

Mr. Payne. Now, you know, just like I said, it was said that the taxpayers' money should not be spent if someone in a government is creating situations that are wrong, I guess we should say. And I agree. But as indicated that unfortunately, you know, U.S. taxpayers' dollars have been spent poorly in my opinion in a number of places. You take Zaire, for example, where our government supported the murderous Mobutu for decades, I mean hundreds of millions of dollars and some of the atrocities that we have seen in other places. I think it is all wrong, but I see such an inordinate amount of interest in a place that has had 24 alleged political killings in a year, where the previous year there were 1,500. And everyone is talking about how bad things are going. You know, I am just still trying to figure out what the whole purpose of this hearing is about, but maybe we could find that out as it continues. I don't have any further questions.

Chairman GILMAN. The gentleman's time is expired. Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman.

Listening to further testimony, it sounded to me like that went all the way up the chain of command to the White House, and the White House said that they didn't want a lot of this information disseminated to the State Department or to the Embassy. And if that is the case, you start wondering why they wanted to keep a lid on all that information.

Mr. Dobbins. I don't believe that was the case.

Mr. Burton. I am not sure that squares with some of the information we have. On July the 3rd, it is my understanding, Ambassador Dobbins, Mr. Perry and Mr. Waxman went to see Mr. Aristide to talk to him about some of the hurdles they had to get over to get on with the investigation. It seems inconceivable to me that the members at that meeting would not know what was going on. I don't understand how you could be at a meeting when you are talking about the impediments to an investigation, the ambassador is there, the FBI is there, the Justice Department is there, and everybody doesn't know what is going on. Because you have got to be talking about it. That is one thing that concerns me. Second, I can't go into this, I can't go into this. Dobbins "slugged", that means it went right to you.

Mr. DOBBINS. It went to me. You don't want to hear the reasons

why it's on there. It will take too long.

Mr. Burton. I am not going to go into it, but the point is, there are numerous cases where these transmissions coming from Washington, referring to the investigation, going into the details of the investigation, went to you. There is no question about it. I am going to go down to the safe, I am going to get them out and I am going to read each one of them, but there is no question that you have to have information about what was going on.

Now let's go back to the statement that you made before my committee. I am going to read to you what was said. I said: "You mentioned, Ambassador, that the FBI was assisting in investigating some of these alleged political assassinations, including the killing of Ms. Bertin." "Yes," you said. "She was gunned down in the middle of Port-au-Prince, Main Street, as I understand it." That is my

question. You said, "Right."

I said, "Because of the traffic jam, have they found anything?" I said, "Because of the traffic jam, she was caught there. Have they found anything about that yet? Have they found anything about that yet?" And you said, "The FBI has not briefed me or, as far as I know, anyone else in the Administration on their findings."

You had information. You chose not to give it to the subcommittee and so you kind of sidestepped that question and said the FBI

hadn't briefed you.

The fact of the matter is, you were at the meeting on July the 3rd with the President, with the FBI, and with the Justice Department. You had numerous transmissions coming to you, and you're the ambassador in Haiti. For you not to know what was going on questions credulity. I don't know how anybody could say you didn't know.

Now, the other thing that I wanted to point out was that——Mr. DOBBINS. I'm sorry, Mr. Chairman, I really insist on an ability to answer that question.

Mr. Burton. I will let you respond in just a second.

On March the 30th on another issue, the State Department press release states that the U.S. Government did have information regarding a plot to assassinate Ms. Bertin. The information was shared with the Government of Haiti. This is from the State Department. Ms. Bertin was informed about the threat and an active investigation with the participation of the MNF was under way.

I don't understand why she wasn't warned by the State Department. Mr. Bereuter pursued that. It makes absolutely no sense to me. The only person who was supposed to tell her she might be an assassination target was the government that might want to assas-

sinate her.

And the last thing that stretches my understanding of this beyond the limits of human understanding is that after the assassination took place, the people who were under investigation, many of whom you couldn't get a polygraph from because they wouldn't take it, the government wouldn't let you have it, they are represented by a government attorney who I understand helped coach them before the FBI. We have transmissions that show that they were actually trying to coach those people when they were being questioned.

Now I don't understand all this. Maybe somebody can explain it

to me, but it sure seems like to me-

Mr. WIDES. Excuse me-

Mr. BURTON. You are not on the panel. Chairman GILMAN. Regular order.

Mr. Burton. It seems to me that there is an attempt here to keep a lid on this thing and there was an attempt when you appeared before our subcommittee to keep a lid on it. And that is something that we cannot tolerate in the Congress of the United States before my subcommittee, our full committee, or any committee. And as I said before, I think it is a sorry state of affairs when I, as a subcommittee Chairman, or the Chairman of the full committee has to start thinking about swearing in every government official to make sure we get the straight scoop so that if there is any attempt to cover up something, we can take positive action. I just think it is disgraceful.

Chairman GILMAN. The gentleman's time is expired.

Mr. WIDES. Mr. Chairman, excuse me.

Chairman GILMAN. The gentleman is out of order. Mr. WIDES. As a matter of personal privilege—

Chairman GILMAN. The gentleman is out of order and if you continue I may have to ask you to be removed from the hearing.

Mr. WIDES. I would like to testify and explain why-

Chairman GILMAN. What is the gentleman's name? Mr. WIDES. My name is Burton Wides. I am counsel for the Government of Haiti. I conducted a murder investigation for them, and I sat in-

Chairman GILMAN. If you will make a request to the committee for a further hearing to appear as a witness, we will consider it.

Mr. WIDES. I'd be happy to do it at this time.

Chairman GILMAN. Mr. Goss.

Mr. Dobbins. Mr. Chairman, excuse me, please, I really feel I should be given the opportunityChairman GILMAN. Thank you. The gentleman's time is expired. Mr. Goss.

Mr. Goss. Mr. Chairman, I would ask unanimous consent that Major General Fisher's letter of March 22nd on the Bertin killing be included in the record.

Chairman GILMAN. Without objection.

[The information referred to appears in the appendix.]

Mr. Goss. Mr. Chairman, I also have many, many questions. I would have to say that I came to this hearing with a great number, and more questions have been raised than have been answered. And I know we are going to have an opportunity to pursue these. I want to know more about White House involvement in this. I want to know more about our investment. Our colleague from New Jersey wants to know why we are having this hearing. I would suggest that \$3 billion or so of American taxpayers' dollars invested in building democracy in a friendly neighboring country is an area of legitimate oversight. I am very concerned that things are not going as well as they should have been, and perhaps we have not had an entirely accurate scenario given to us by the Administration in oversight. But I am more concerned right now about getting straight answers on some things that bother me very much.

I have heard too much inconsistency here today. I have some legitimate questions about whether or not we have a problem with regard to Celestin or not. I think that is a very serious question

for us.

I think the question I asked about the SIU is very serious, particularly in light of the testimony that we have from Mr. Waxman and Mr. Perry, that those are the people we will be cooperating with. If we are cooperating with perpetrators, we have a problem on our hands. And I think that we would get acknowledgment of that

And finally, because our time is short, Mr. Chairman, and you have been extremely generous, I will just tell the witnesses, those who will be coming forward to other committees and working in closed session, that I do have further questions. I would like to ask Ambassador Dobbins if he could submit for the record for this committee evidence of communications that he had, either by telephone or in writing or any other way, on requests for FBI briefings or interagency briefings of what was going on with the Bertin investigation by the FBI, particularly with the White House and any response he got from the White House. Because I noticed that part of the activity that was happening with Haiti these days is lobby-ist-driven, and I also notice that many of the dollars to support those lobbyists are taxpayers' dollars. That bothers me as well. I think it is an area of legitimate concern for another hearing.

Chairman GILMAN. We will keep the record open for that re-

quest.

Chairman GILMAN. Mr. Dobbins, I cut you off before. If you will be very brief in your response, we have to go to the floor for a vote.

Mr. Dobbins. OK, I'm sorry, Mr. Chairman. I just wanted to say the distinction has been made, I think, between my participation in discussions with the FBI about overcoming impediments, which I certainly participated in heavily, and my participation in discussions about findings. I was asked on October 12th about findings.

I actually volunteered information about how we were overcoming

impediments in my testimony.

On the question of findings, I did not believe based on secondhand information I was in a position to give the committee any useful information. So maybe I made an artificial distinction that wasn't intended in the question, but I thought he was asking about substantive findings and I didn't believe I was in a position to share them.

Chairman GILMAN. Thank you. We will keep the record open for any additional questions the members may have. I will ask our panelists if they would be kind enough to respond to any additional

questions.

There have been a number of troublesome questions raised here at the hearing this committee will have to pursue in the coming weeks. And the committee stands adjourned.

[Whereupon, at 1:14 p.m., the committee was adjourned.]



## APPENDIX

STATEMENT OF
ROBERT S. GELBARD
ASSISTANT SECRETARY OF STATE
FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS
BEFORE THE
HOUSE INTERNATIONAL RELATIONS COMMITTEE
January 4, 1996

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to discuss our role in the establishment of a professional civilian law enforcement authority in Haiti. Such a force is essential to a secure environment in the country, one in which fundamental human rights and freedoms are fully respected. Our assuring that the Government of Haiti has the ability to maintain such an environment -- after the departure of UN forces in two months' time -- is a fundamental element of our policy in Haiti.

I would like to begin by underscoring an achievement of which the governments of the United States and Haiti can both be proud. In about one year's time, in a nation whose institutional development generally is very weak, and where the establishment of professional institutions independent of political influence is almost unheard of, we —— the United States and Haiti together —— have built a new national police force which is in the process of becoming the capable, apolitical professional force required to help buttress this newly democratic nation.

As we will discuss today, Mr. Chairman, much still needs to be done to accomplish this goal in full. But we would be very harsh judges indeed not to acknowledge that the Haitian National Police has made tremendous progress in the year since

its founding. The force that has been deployed to date is not perfect; given the weak institutional environment that exists throughout Haiti, it is difficult to imagine that it might ever be perfect. But it is perfectable, in my view. And to this end continued U.S. engagement -- within strictly defined requirements for HNP performance -- is key.

Mr. Chairman, I believe we can ensure the new police force meets at least minimal operational standards within the next two months -- a level of capability that will allow for the withdrawal of UN and U.S. forces on time and in full -- provided two criteria are met:

- -- First, the U.S. must complete the basic training of the students now enrolled at the National Police Academy in Port-au-Prince.
- -- Second, the Government of Haiti must take action to ensure that the HNP remains a non-political, professional force.

What I propose to do in my testimony is to give this

Committee an overview of U.S. actions in support of the

establishment of a new civilian public security structure in

Haiti; lay out our objectives, and what we have done to meet

them; describe for you some of the obstacles that have arisen

which could impact on our goals, and how we are addressing them.

Our interest in helping the Haitian government build a new civilian police force predates the restoration of democracy to Haiti. For example, after the coup removed the legitimate government of President Aristide, we worked with the Haitian government-in-exile to develop a conceptual plan for a new

civilian police force, which was completed in March of 1993.

ICITAP worked with exiled GOH members and with the Haitian

Parliament to draft new police legislation, which eventually

was enacted into law in December 1994 after the reestablishment

of the legitimate government in Port-au-Prince.

In the summer of 1994, we initiated a program in four phases to get a new police force up and running:

- -- Before the September 1994 Multinational Force (MNF) deployment, we helped the then-exiled Government of Haiti to interview and select 1,000 persons from the Haitian migrant community living at Guantanamo to assist the MNF in performance of its initial public safety duties. The Guantanamo group was given minimal training, designed only to allow them to perform supporting roles for the MNF. The group has not been trained, nor is it qualified, to carry out the full range of police work.
- -- In October 1994, we assisted the rightful Haitian Government in the establishment of an Interim Public Security Force (IPSF). With a few exceptions, the IPSF was made up of the Haitian Armed Forces (FAd'H) who were able to pass a basic check. This review included vetting of names against lists supplied by human rights organizations and U.S. law enforcement agencies, to exclude those who had committed human rights violations or other criminal offenses. The IPSF, of course, was meant to serve only as an interim solution to Haiti's indigenous public security needs while we worked with the GOH to form a new police force.

- -- Prior to the MNF's deployment, we led the effort to recruit 850 International Police Monitors (IPMs), to monitor and assist the IPSF. Later, with the MNF's transition to a UN command, the IPM functions were assumed by a UN-mandated Civilian Police (CIVPOL) force, which has also recently engaged in field assistance and training to newly-deployed members of the Haitian National Police.
- -- Finally, in January of 1995, the GOH, with our full support, began the process of establishing a new apolitical, professional Haitian National Police.

Working with the GOH -- principally through ICITAP -- to design the new Haitian National Police, we established the following objectives:

- -- all candidates would be selected solely on the basis of
  merit;
- -- those selected would undergo rigorous basic training, aimed at providing them with the skills to carry out community-based policing in a democratic society, while inculcating a respect for fundamental human rights;
- newly-graduated agents would continue to receive some level of field training and mentoring from academy instructors and CIVPOL police monitors;
- -- agents would have the basic equipment necessary to carry out their duties; and

-- after a period of field service, HNP agents would selectively receive advanced and specialized training (crowd control, VIP protection, investigations, forensics, supervisory training, et cetera) to round out the capabilities of the force as a whole.

Our horizon for the full implementation of the program was five years. Our work with the HNP is about at its first anniversary, and I believe it is a good time to take stock of our efforts.

## Our Record with the HNP To Date

Mr. Chairman, I believe we have made good progress on standing up the new Haitian National Police.

Our merit-based recruitment -- conducted by multinational teams composed of U.S., Canadian, French and Haitian government representatives travelling the countryside -- produced over 33,000 candidates for 5,000 available slots.

Testing, which was rigorous but fair, included written and oral examinations as well as psychological profiling and comprehensive medical testing. While all candidates were vetted for past criminal activity and human rights abuses, once vetted they were assigned numbers to disguise their identities. In this way, candidates could not be selected by name based on political considerations. Less than 15 percent of the applicants passed the entrance tests. HNP trainees today represent the most talented in Haitian society.

Further, ICITAP training at the new National Police
Academy has provided students with basic skills for community
policing. This has been accomplished in spite of an
accelerated program mid-stream to meet the GOH's revised
officer deployment schedule.

We did this, Mr. Chairman, by dividing the curriculum into two sessions, and opening an auxiliary "academy" at Fort
Leonard Wood, Missouri. For six months, we offered eight weeks of conceptual training (human rights, Haitian law) at the Academy in Port-au-Prince, and eight weeks of practical programs (firearms, arrest procedures, driving) at Fort Leonard Wood.

Throughout, international field-mentoring efforts have continued, mostly through CIVPOL, but this support is not enough given the relative inexperience of the HNP recruits. We believe the GOH may ask for a continued CIVPOL presence, following the expiration of the UN mandate in February, but such a request has not yet been made.

Equipping the HNP is a continuing problem. Conditions at many stationhouses are poor, office infrastructure minimal and the force still lacks many of the most basic items used by modern police. It is especially important that the GOH dedicate more of its own resources to standing up the police. In addition, the force will also need more specialized training, which ICITAP would propose to begin soon.

#### Future Police Professionalism

Like this Committee, Mr. Chairman, this Administration is extremely concerned about the continuing apolitical and professional profile of the HNP. While we recognize the need for greater numbers of police than will have been deployed by the departure of the UN forces, we have strongly argued against the Haitian government's decision to merge significant numbers of the IPSF into the HNP. We have not taken the position that IPSF members ought to be excluded from the HNP, but rather have argued that the decision to include IPSF members should be made on a case-by-case basis. Their eligibility for consideration should be based first on their professional performance -- with special emphasis on human rights grounds -- while in the IPSF. Assuming they are able to meet the same recruitment standards as other HNP academy graduates, we would support their inclusion and would be willing to provide U.S.-funded Academy training, if funding for such training were available.

As an alternative, we would support the creation of specialized corps -- for traffic control, for stationary security at public facilities -- that would induct IPSF members at something other than the "sworn officer" status of the HNP Academy graduates. There is a demonstrated need for such personnel throughout Haiti.

We have expressed our concern in particular about the induction of more than 100 ex-FAd'H officers into headquarters and field-leadership positions in the HNP. We have continued

to recommend merit-based selection and have made our concerns clear to the GOH. We understand that the UN Civilian Police had some role in selecting these officers for retention, and we understand that the UN has recommended their incorporation into the HNP. While we understand that the UN based its recommendations on feedback from its corps of 600 police monitors serving in the field, we nevertheless differed in our assessment and in our advice to the GOH.

As Ambassador Dobbins mentioned, we hold our deepest concern over the inclusion of individuals in the HNP's ranks who may have committed criminal acts. We will not support a force which harbors criminals in its ranks. On this, our position with the GOH has been unswerving. We want to ensure a thoroughly apolitical, professional national police force that respects human rights and fundamental freedoms, and our future support is contingent upon progress toward this basic goal.

Mr. Chairman, we are at a delicate juncture in terms of our training of the HNP. Without the release of further funds through AID to ICITAP, the ICITAP police training program in Haiti will run out of funds on January 15. At that time, the expatriate training staff of the Haitian National Police Academy -- some 150 police officers, largely from the U.S. but including some 20 Canadian RCMP and five French national police instructors as well -- would be dismissed and sent home. In

effect, the Academy would close. That will have important consequences on our ability to stand up a fully functional HNP capable of taking over all public security functions from the UNMIH forces and allow their orderly departure.

It would mean that the last two classes of HNP cadets -
1,500 members of basic training classes eight and nine -- could

not graduate and would be unprepared for the field. Further,

certain specialized training programs could not be carried out

and ICITAP technical assistance to the HNP would be

terminated. Departure of the ICITAP advisors now would

seriously hamper our efforts to institutionalize procedures and

operations of the new police force.

Mr. Chairman, the Administration continues to believe, and will seek to confirm, that the GOH broadly shares the goals I have outlined above. With the GOH, we hope to complete the basic task of fielding a well-trained, motivated corps of professional Haitian police -- a force capable of carrying out its public security mandate while respecting human rights. We want to finish what we started to give Haiti its best possible chance for lasting democracy.

Thank you.

STATEMENT OF
JAMES F. DOBBINS
SPECIAL HAITI COORDINATOR
DEPARTMENT OF STATE
BEFORE THE
HOUSE INTERNATIONAL RELATIONS COMMITTEE
January 4, 1996

Haiti has a long unhappy tradition of political violence. Helping Haiti's democratic leaders break with that tradition has been a major objective of American policy.

Haiti's historical record has been one of a widespread practice of abuses: judicial corruption, arbitrary arrest, prolonged detention of suspects, and excessive use of force by the authorities, punctuated by short, dramatic periods of extrajudicial killings and other violent attacks, often with clear political motives and always with impunity for members of the security forces. Haiti is breaking this pattern; such practices have become the object of sweeping government efforts to recreate its justice and security systems.

In the most far-reaching of these efforts, the Haitian army has been disbanded. In its place, the Haitian National Police will by this coming March have fielded 5,000 new police officers, selected in an open, apolitical, rigorous and competitive national process. They are receiving four months of intensive professional training, in a program organized by the US Department of Justice, and taught by professional law enforcement officers from France, Canada and the United States.

With the dismantlement of the FAdH, once known for its violent and repressive tactics, the abolition of the rural section chief system (which occurred in late 1994), and the formation and training of a civilian national police force, there has been a dramatic drop in violence, and improvement in the human rights situation. All types of violent crime are down dramatically. In March of last year, there were 101 murders in Haiti, a high figure, but not out of line for a country of Haiti's size, population, and poverty. That number has since fallen substantially.

Political violence has fallen off even more sharply. Following three years of brutal repression during which rape, torture and murder were the routine instruments of governance, many had expected the restoration of Haiti's legitimate government to be followed by a wave of retribution. Thanks to the professionalism of American and international forces, and to President Aristide's campaign of reconciliation, nothing of the sort has occurred.

Recognizing how the situation has improved is not to suggest that further steps are not needed to eradicate political violence from Haitian life. As I noted to this Committee on October 12, there have been some two dozen murders committed in Haiti since October, 1994, which may fall in the category of political or revenge killings, the most prominent of which was the murder of Mireille Bertin on March 28, 1995. Recognizing the importance of eradicating political violence from Haitian life, the U.S. Government has, over the past year, maintained an intense dialogue with President Aristide regarding the Bertin investigation, other potentially political murders, possible connections among these killings, and the possible involvement of individuals in official positions with such activities.

President Clinton, Vice President Gore, Secretary of Defense Perry, Assistant to the President for National Security Affairs Lake, Deputy Secretary of State Talbott, Ambassador Albright, Ambassador Swing, and other representatives of State, Justice, and Defense have all, on various occasions reviewed these issues with President Aristide. In these discussions, we have urged that acts of political violence be investigated and prosecuted aggressively. We have urged that anyone implicated in such activity be relieved of all official responsibilities. We have urged that a new, professional police and justice establishments be created, untainted by any association with past acts of political violence.

President Aristide instantly accepted our offer to have the FBI investigate the Bertin murder. He subsequently sought to broaden the scope of the FBI's efforts to cover other high profile, possibly political cases, dating from the coup period. He accepted our counterproposal that he form a new investigative unit to investigate all such crimes, including the Bertin case. He agreed that this investigative unit should be made up of ICITAP trained graduates from the Police Academy, that it should be supported by professional investigators from the Royal Canadian Mounted Police, the French Gendarmerie, and the United States, with forensic and other technical support from the FBI.

President Aristide provided the principal political impetus for a complete renovation of Haiti's police and justice system. He joined legislators from across the political spectrum to push the new police law through the Parliament. He dismantled the Army. Early in 1995, he replaced his Justice Minister with another, more ready to work cooperatively with the international community on a thorough reform of the police and judiciary. He worked with us to ensure that the 5,000 new police — by far the largest and best paid source of new employment in a country with over 50% unemployment — would be recruited in a competitive and apolitical process.

Our dialogue with the Government of Haiti on these matters is by no means concluded. We will continue to press for an

aggressive investigation of the Bertin, and other possibly political murders. We will continue to urge that the Haitian Government separate individuals who may be implicated in these acts from any connection with the police or judicial establishment, even before the investigation is complete. We will continue to urge that appointments to senior positions in the Haitian National Police be based upon merit, and competence, not patronage and political loyalty. We will continue, in other words, to urge that the Government of Haiti sustain the reforms in Haiti's police and justice system which it has set in train.

Assistant Secretary Gelbard will address issues related to our training of the new Haitian National Police. As he will note, we have made clear that we will not support a force which harbors criminals within its ranks. This includes, obviously and especially, anyone implicated in political violence. We have, over the past 15 months, made major strides in ridding Haiti's security establishment of such individuals. We will remain vigilant, and we remain optimistic that our efforts can have continued effect.

We have worked closely with the Congress in helping Haiti create a new police force, establish the rule of law, and deal with the problem of political violence. Department representatives have met with Members or staff over 30 times since January 1995, and 11 times since October. I raised the Bertin case in my October 12 testimony to this Committee. On November 2, State and all other agencies concerned provided detailed and extensive information on this same subject to the House Select Committee on Intelligence.

I understand that you may have some question as to why we did not furnish this Committee on October 12 with the same information we gave to the Intelligence Committee two weeks later. On October 12, I informed this Committee that the Government of Haiti had just set up a Special Investigative Unit to pursue the Bertin and other possibly politically motivated killings. Prior to that event, the FBI had treated this inquiry as an ongoing criminal investigation, and shared only such information as it deemed necessary and advisable with Embassy, CIA, and DOD personnel in Port-au-Prince. It was following the creation of the Special Haitian Investigators Unit, and thus later in October, that the FBI representatives in Washington met with State and other relevant agency representatives to share the results of their investigation, as we prepared to turn this material over to this new Haitian investigative unit, and to respond to inquiries from the House Select Committee on Intelligence.

Mr. Chairman, in eight weeks the peacekeeping operation of the UN in Haiti will be completed. Our troops will come home. Their orderly, safe, and timely departure is, I know, a priority we all share. We have learned through experience that the most difficult part of any peacekeeping operation is often its conclusion, not its initiation. Essential to the successful and timely conclusion of this particular operation is the deployment, on schedule, of Haiti's new police force, in order that something is in place to replace departing U.S. and other international military forces, and assume responsibility for security in Haiti when the mandate of the UN peacekeeping force terminates in February. Over 1,500 Police cadets remain in training today. We seek your cooperation in assuring the funding necessary to allow these cadets to complete their training over the next eight weeks.

### **OPENING STATEMENT BY**

# DEPUTY ASSISTANT DIRECTOR WILLIAM E. PERRY

## FOR TESTIMONY BEFORE

### THE HOUSE INTERNATIONAL RELATIONS COMMITTEE

Mr. Chairman and members of the committee, my name is William E. Perry, and I am a Deputy Assistant Director of the Federal Bureau of Investigation.

Special Agents of the Federal Bureau of Investigation arrived in Port-Au-Prince, Haiti, during the early morning hours of March 29, 1995, to initiate an investigation into the murders of Mireille Durocher Bertin and Eugene Baillergeau, Jr. As the Committee knows, Madam Bertin was a prominent, politically active Haitian attorney, and an outspoken critic of President Jean-Bertrand Aristide. Baillergeau was Bertin's client and had been driving her to a meeting, called on his behalf, concerning a claim which he had made for alleged damage to his personal aircraft.

At approximately 3:30 p.m. in the afternoon of March 28, 1995, both were slain by 9mm and 5.56mm gunfire from at least two assailants as their car sat in heavy traffic on Martin Luther King Blvd. in Port-Au-Prince. Members of the multi-

national peace keeping forces (MNF) and members of the Interim Public Security Force (IPSF) responded to the site and attempted to preserve the scene of the crime until the arrival of the FBI's Evidence Response Team.

Upon arrival in Haiti, liaison was immediately established with Haitian Government officials and with the U.S. Embassy. Since we were conducting a law-enforcement investigation in a foreign culture, with a foreign language, and with no contacts of our own, we met regularly in Port-Au-Prince with representatives of the Embassy, the U.S. military, and other relevant U.S. agencies in order to obtain assistance and advice and generally to apprise them of the course of our investigation. Discussion included investigative strategies, problems experienced, and certain investigative information developed on the murders.

We did not provide this information as an intelligencegathering or intelligence-dissemination effort: We were not in Haiti to do either and we did not. Rather, we provided information to these agencies in Port-Au-Prince in order to obtain their cooperation and assistance and thus to enhance our ability to achieve our investigative goals.

Outside of Port-Au-Prince, the FBI's level of information sharing with other agencies was much different.

FBIHQ officials interacted with DOS counterparts and DOJ officials infrequently with respect to the Bertin investigation, when necessary to support investigative efforts in Haiti. For example, my first interaction with Ambassador Dobbins - or with Associate Deputy Attorney General Waxman, for that matter - was on a trip we made to Haiti together in July 1995 to meet with President Aristide to discuss the means of removing certain obstacles to our investigation. In late October of this year, when we concluded that our investigation in Haiti could not productively continue and the time had come to turn the investigation over to newly constituted Special Investigative Unit of the Haitian National Police, we discussed this proposed transition and provided a substantive briefing on the Bertin investigation to Washington representatives of the Departments of State and Defense and other agencies.

Initial FBI investigative efforts consisted of collecting and preserving forensic evidence, including bullet fragments, shell casings, latent fingerprints, and photographs. Preliminary interviews attempted to establish specific circumstances of the act and to identify potential witnesses and subjects. On April 9, 1995, managers from FBI Headquarters and Miami, flew to Port-Au-Prince to assess the matter, determine personnel and equipment resources requirements, assist in the development of an investigative plan, and to effect liaison with the Ambassador, Deputy Chief of Mission, the Commanding General

of the U.S. Army segment of the Multi National Force, and appropriate members of the Government of Haiti.

The FBI's investigative strategy was designed to ensure that a thorough and comprehensive investigation was conducted, in spite of the FBI's lack of compulsory process, witness protection, etc., in a foreign country. The investigation sought to examine all possible motives for the murders that included but are not limited to the following:

- That the killings were random acts of violence in which Bertin and Baillergeau were not the intended victims;
- That Bertin and Baillergeau were the targets of a robbery attempt;
- That Bertin and Baillergeau were targeted as a result of disputes with respective spouses or associates;
- The possibility that Bertin and Baillergeau were targeted as a result of involvement in drug trafficking and/or association with the drug culture;
- The possibility that the victims were targeted because of their involvement in other criminal activity; and

 The possibility that Bertin and Baillergeau were murdered because of their political affiliation.

Haitian Minister of Justice Jean-Joseph Exume and Prime Minister Smarck Michel were apprised of the FBI's investigative plan during meetings on April 10th and 11th, 1995. Contact was made with Government of Haiti officials to coordinate investigative efforts and obtain available information. FBI Agents met with IPSF personnel involved in the Bertin/Baillergeau murder investigation. At these early meetings, it was agreed that the FBI and IPSF would conduct parallel investigations and exchange information. However, the FBI is not aware of whether, or the extent to which, the IPSF actually conducted a separate investigation of the murders. Once its own investigation began, the FBI did not pursue an evidence exchange with the IPSF and provided it no information.

The FBI encountered difficulties and major obstacles at the inception and throughout the investigation because of the investigation's unusual nature and other uncontrollable circumstances. In this case, the FBI was investigating a violation of foreign law. The investigation was conducted in a foreign country and in a foreign language. Moreover, the investigation was commenced at a time when the criminal justice system in Haiti had not functioned effectively for years.

Traditional investigative resources typically relied upon by the

FBI are not readily available in Haiti, for example, public source information and automated vehicle registration information. The FBI had greater difficulty interviewing witnesses than it would in the United States because of the language barriers and cultural differences.

Security of FBI personnel was of paramount importance. Although they wore no uniforms, the Agents were easily identified as outsiders, and thus were potential targets. The only acceptably safe and secure lodging for FBI personnel was in facilities controlled by the U.S. Army. There were also serious logistical problems in Port-Au-Prince. It was not unusual for a single trip to conduct an interview or to follow-up on a lead to require three or four hours of travel time. This was primarily due to the density of the population, the poor road conditions, and lack of traffic control. This problem also intensified safety concerns in that it would have been impossible to respond effectively to a call for emergency assistance by an Agent.

The Government of Haiti was requested to grant FBI personnel investigating the murders some type of limited immunity similar to that granted to Embassy personnel. The Government of Haiti never responded formally to the request for immunity for FBI personnel.

The language barrier has been a substantial impediment. In order to interview or talk with most people in Haiti, the Agents had to utilize the assistance of U.S. military linguists as interpreters. However, notwithstanding the military interpreters considerable skills, obtaining information from Haitian citizens was extremely difficult. Many witnesses, including persons at the crime scene, were reluctant to talk apparently for fear of retribution from the Government of Haiti and/or individuals responsible for the murders of Bertin and Baillergeau. The citizens of Haiti have been exposed to years of oppression, terrorism, and physical abuse at the hands of individuals represented to be Haitian government or lawenforcement authorities. This factor and other cultural differences made the task of soliciting information and cooperation from the citizens of Haiti extremely difficult. The interviewees slowly began to provide more information, but nonetheless continued to express a prevalent fear of reprisal or retaliation and provided information only on the condition of anonymity. Agents were frustrated by their lack of familiarity with the criminal justice system and working knowledge of how the system should perform.

Further complicating the investigation was the fact that the FBI has no legal status in Haiti. The FBI cannot obtain orders from judicial authorities to compel witnesses to give statements. There is no legal obligation for persons to

cooperate or provide truthful information to the FBI. Similarly, the FBI has no authority to conduct searches or obtain subpoenas to gather evidence. The FBI also has no authority to offer any form of witness protection.

All of these factors slowed the pace of the FBI's investigation of the Bertin/Baillergeau murders and were frustrating to the FBI Agents in Port-Au-Prince.

As a result of investigative efforts, particularly source information of unknown reliability, the FBI expressed to the Government of Haiti the likelihood that it would be necessary to interview Government officials and employees including cabinet members. In early June 1995, FBI Agents interviewed various IPSF members. Subsequently, the FBI experienced significant investigative difficulties because of its inability to interview Government of Haiti officials and employees, including some members of the IPSF and the Palace Security Service on terms consistent with an impartial, professional investigation.

Issues were raised regarding the conditions under which the FBI could interview IPSF personnel. The FBI had extended negotiations with Government of Haiti officials and the attorneys representing the IPSF officers regarding these interviews.

Ultimately our efforts were stymied by what in our professional judgement were unreasonable conditions placed upon any such

interviews by private attorneys purporting to represent these individuals. As the FBI has no access to compulsory process of any sort in Haiti, we felt the time had come to turn the investigation over to the Haitian authorities.

I hope my appearance today will address the Committee's questions regarding the FBI's involvement in the Bertin/Baillergeau murder investigation in Haiti.

# THE HONORABLE DAN BURTON JANUARY 4, 1996 COMMITTEE ON INTERNATIONAL RELATIONS

MR. CHAIRMAN, IT HAS NOW BEEN SOME 16 MONTHS SINCE PRESIDENT CLINTON SENT 20,000 U.S. TROOPS TO HAITI. THEIR MISSION WAS, AS THE PRESIDENT HIMSELF SAID IT, "TO RESTORE DEMOCRACY TO HAITI."

IN JUST TWO MONTHS, U.S. AND OTHER TROOPS ARE SET TO WITHDRAW FROM HAITI. IN THE AFTERMATH OF THE PRESIDENTIAL ELECTIONS LAST MONTH, AND THE ELECTION OF RENE PREVAL AS HAITI'S NEXT PRESIDENT, WE HAVE BEEN HEARING PREMATURE DECLARATIONS OF SUCCESS OF THE HAITI POLICY.

HOWEVER, AS IS OFTEN THE CASE, WISHING FOR SOMETHING DOESN'T MAKE IT TRUE. ALL OF US WOULD LIKE TO SEE DEMOCRACY AND PROSPERITY IN HAITI. UNFORTUNATELY, WE MUST BE REALISTIC AND ADMIT THAT THINGS ARE NOT GOING WELL IN HAITI. THE SITUATION IS QUITE BLEAK AND COULD IN FACT GET EVEN BLEAKER IF THE CURRENT TREND IS ALLOWED TO CONTINUE.

THERE ARE A NUMBER OF ISSUES THAT CONCERN US GREATLY:

FIRST OF ALL, THE PRESIDENTIAL ELECTION, SO STRONGLY HYPED AS A GREAT SUCCESS, WAS IN FACT, A FARCE. THE TURNOUT WAS EXCEEDINGLY LOW--SOME RELIABLE ESTIMATES PLACE IT AT 5-8%. THE APATHY OF THE HAITIAN PEOPLE WAS PAINFULLY OBVIOUS.

FURTHERMORE, THERE WAS NO REAL COMPETITION IN THE ELECTION. SEVERAL OF THE MAJOR OPPOSITION PARTIES BOYCOTTED THE VOTING. SEVERAL CANDIDATES WERE HARASSED AND INTIMIDATED. ALL IN ALL, A SITUATION THAT DOES NOT BODE WELL FOR DEMOCRACY.

SECONDLY, HAITI CONTINUES TO BE PLAGUED BY POLITICAL VIOLENCE. SEVERAL MURDERS OF POLITICAL OPPONENTS OF PRESIDENT ARISTIDE ARE STILL UNSOLVED, DESPITE STRONG EVIDENCE INDICATING THAT ARISTIDE LOYALISTS WERE INVOLVED. THIS IS QUITE SIMPLY, AN INTOLERABLE SITUATION.

THE NEXT ISSUE OF CONCERN IS THE CORRUPTION AND INCOMPETENCE OF THE NEW POLICE FORCE. IF HAITI IS TO BE A LAW-ABIDING SOCIETY, THERE MUST BE RESPECT FOR THE POLICE. YET, DESPITE REPEATED PLEDGES BY PRESIDENT ARISTIDE TO RESPECT THE INTEGRITY OF THE POLICE, HIS GOVERNMENT CONTINUES TO APPOINT UNSUITABLE INDIVIDUALS TO SERVE ON THE FORCE.

IN FACT, PRESIDENT ARISTIDE PERSONALLY ASSURED ME, WHEN I WAS IN HAITI LAST FEBRUARY, THAT HE WAS TOTALLY COMMITTED TO A TRULY INDEPENDENT POLICE FORCE. HE PLEDGED THAT HE WOULD NOT LOAD THE FORCE UP WITH HIS OWN LOYALISTS. YET THIS IS PRECISELY WHAT WE ARE NOW WITNESSING, MUCH TO OUR EXTREME DISAPPOINTMENT. LAVALAS CRONIES AND BRUTAL UNQUALIFIED EX-SOLDIERS DO NOT BELONG IN THE

HAITIAN POLICE, IF IT IS TO HAVE THE RESPECT OF THE PEOPLE.

FINALLY, THERE IS THE PROBLEM OF HAITI'S ECONOMY, WHICH IS A BASKET-CASE. WITH 80% UNEMPLOYMENT, WITH ELECTRICITY CONFINED TO TWO OR THREE HOURS A DAY, WITH FOREIGN INVESTORS STILL DOUBTFUL ABOUT HAITI'S PROSPECTS, THE HAITIAN GOVERNMENT MUST THE NECESSARY STEPS TO JUMP-START THE ECONOMY. NEVERTHELESS, UNDER PRESIDENT ARISTIDE, THERE HAS BEEN A BACK-SLIDING FROM THE COMMITMENT TO PRIVATIZATION. THIS HAS LED TO THE RESIGNATION OF FORMER PRIME MINISTER MICHEL, A MAN WHO WAS SINCERELY INTENT ON ECONOMIC REFORM.

UNLESS THESE ISSUES ARE ADDRESSED FORTHRIGHTLY AND AGGRESSIVELY BY PRESIDENT PREVAL, I BELIEVE IT WILL BE IMPOSSIBLE FOR THIS CONGRESS TO APPROVE ANY ASSISTANCE FOR HAITI. ANY SUPPORT FOR A GOVERNMENT THAT DOES NOT WORK IN GOOD FAITH TO ANSWER THESE CONCERNS WOULD SIMPLY BE MONEY DOWN A RAT-HOLE.

I APPLAUD YOU MR. CHAIRMAN, FOR PLACING A HOLD RECENTLY ON MONEY INTENDED FOR HAITI'S POLICE TRAINING. I HOPE THIS MOVE WILL SEND A STRONG MESSAGE TO THE INCOMING HAITIAN GOVERNMENT. IF THEY ARE NOT WILLING TO PRODUCE RESULTS ON ALL OF THESE FRONTS, I AM AFRAID THAT THE UNITED STATES CANNOT AND WILL NOT BE ABLE TO SUPPORT THEM.

THANK YOU, MR. CHAIRMAN.



United States Department of State

Washington, D.C. 20520

January 3, 1996

Dear Mr. Chairman:

Shortly you will receive our response to your letters of December 15 and December 22, regarding the training of the Haitian National Police. We have also made arrangements to give your Committee's staff and members access to the first batch of documents requested by Chairman Combest (and Roger Noriega actually reviewed those documents on December 29). Those additional documents requested subsequently by you, Chairman Combest, and Chairman Helms should be available shortly.

We are, needless to say, concerned that you should think that the Department of State may have held back from the Congress information regarding the FBI's investigation of the murder of Mireille Bertin. We can assure you that such is not the case. Through early October, the FBI treated this inquiry as an ongoing criminal investigation. Accordingly, it shared only such information as it deemed necessary and advisable with Embassy, CIA, and DOD personnel in Port-au-Prince. Based on contacts with the FBI and other sources, our Embassy reported on the Bertin investigation. In Washington, the relevant agencies cooperated in seeking to overcome obstacles which the FBI had encountered in the course of its investigation.

In late October, after a decision had been made to discontinue the independent FBI investigation and to turn the material it had gathered over to the Haitian investigative team created for the purpose of pursuing this inquiry, FBI representatives in Washington met with State and other relevant agency representatives to share results of their investigation. Congress was informed in early November, when all involved agencies provided the House Permanent Select

The Honorable

Benjamin A. Gilman, Chairman,

Committee on International Relations,

House of Representatives.

Committee on Intelligence (HPSCI) with written testimony and a comprehensive set of answers prepared for a closed HPSCI hearing scheduled for November 1, but subsequently postponed.

The re-emergence of political violence in Haiti, and the possible implication of senior officials in the Haitian security apparatus has been and remains at the top of our bilateral agenda with Haiti. The President, Vice President, Secretaries of State and Defense, the National Security Advisor, and other senior American officials have dealt directly and forcefully with this issue in their conversations with President Aristide and we will do'so with his successor. We are confident that, as the Committee reviews the telegrams and other material requested and being made available, you will recognize the priority this issue has received.

Security, democracy and respect for human rights is on the rise in Haiti, but that society remains a deeply troubled one. Further progress in all these fields will require time, attention, assistance, firmness and candor on our part. We are most anxious to work with you and your colleagues to sustain these qualities in our relationship with Haiti.

Sincerely,

Wendy R. Breuman

Wendy R. Sherman Assistant Secretary Legislative Affairs



United States Department of State

Washington, D.C. 20520

JAN 3 1996

Dear Mr. Chairman:

The Secretary has asked that we reply to your and Chairman Helms' letter of December 15 concerning recent developments in Haiti. We are also taking this opportunity to reply to your letter of December 22, which addressed similar security and police training issues.

#### UNMIH Withdrawal

Like you, the Administration fully expects the UN peacekeeping mission (UNMIH) mandate in Haiti to expire as scheduled on February 29, 1996. The U.S. Government is engaged in discussions involving the United Nations, the Government of Haiti, and the other "Friends of the Secretary General" concerning the transition to and the nature of the post-UNMIH arrangements in Haiti. As we have previously discussed with Committee staff, U.S. development projects are expected to continue. The Government of Haiti is considering a request for the continued presence of a small, highly qualified contingent of UN Civilian Police (UN CIVPOL) to continue field training for the new Haitian National Police (HNP), and perhaps also for a small international military contingent to provide a rapid reaction capability in the capital while the HNP develops that capability. Bilateral deployments for training by U.S. military engineers may also continue in Haiti, as in other countries in the region. No peacekeeping role for U.S. forces following the expiration of the UNMIH mandate is envisioned.

The Department of Defense is prepared to brief you on plans for the withdrawal of U.S. forces. It is clear at this juncture that UNMIH's existing peacekeeping mandate will end on February 29. In keeping with normal UN practice, the UNMIH forces' responsibilities after that date will be confined to executing a prompt, orderly and safe withdrawal of their equipment and personnel. Within this framework, we understand that DoD's current planning calls for the majority of the American component of UNMIH to have departed Haiti before the end of March.

The Honorable

Benjamin A. Gilman, Chairman,

Committee on International Relations,

House of Representatives.

#### Police Training

As pointed out in the more detailed answers to your questions of December 15 (enclosed), and during our briefing to Committee staff December 21, the U.S. has begun discussions with the Haitian government regarding its decision to assimilate 1,511 individuals remaining from the former Interim Public Security Force (IPSF) into the HNP. This group includes 829 Guantanamo-trained "public safety" personnel and 682 former members of the Haitian Armed Forces (FAd'H). We have urged that these individuals be vetted, as were former FAd'H a year ago when brought into the IPSF, to ensure that no one with links to corruption, drug trafficking or human rights violations is integrated into the HNP.

In this connection, the U.S. Government is developing, in consultation with UN CIVPOL and with UN/OAS International Civilian Mission human rights monitors, our own information base on all of these individuals. We will bring to the attention of the Haitian Government credible negative information on any former IPSF members, and will strongly urge that any who do not meet the above criteria not be retained in any police or security role whatsoever. The Haitian Government has expressed a desire for further training for the former IPSF members being assimilated into the HNP.

We are willing, in principle, to provide appropriate training, but only to former IPSF members who have successfully cleared the vetting process. We can assure you that no individuals who fail to meet those criteria will receive any U.S.-provided training.

#### Special Investigative Unit

The Haitian Government has, as you know, established a Special Investigative Unit (SIU), to investigate high profile crimes including the murders of Mireille Bertin and Jean Hubert Feuille. The SIU is hampered, however, by a lack of professional investigatory expertise. Accordingly, the Government of Haiti has asked UN CIVPOL and the U.S. Government to provide trained investigators to assist the operations of this investigative unit. The UN has already assigned a team of Canadian and French police officers to that task. The U.S. Government, for its part, has recruited two experienced American investigators to work with CIVPOL as advisors for this unit. The U.S. Government will continue to urge the Government of Haiti to have this unit move aggressively on these cases in the weeks ahead.

Representatives of the Federal Bureau of Investigation (FBI) have recently met with the prosecutor responsible for handling the Bertin case, in order to convey results of the FBI's investigation, and to establish arrangements for the provision of forensic assistance. Senior U.S. executive branch officials have repeatedly urged the Government of Haiti to

undertake a serious, thorough and professional investigation of this and other possibly politically motivated crimes, or in addition risk losing U.S. assistance. We will continue to follow the SIU's efforts closely.

#### Document Requests

With respect to the documents requested in your and Chairman Helms' letter of December 15, the information you seek as well as many of the underlying telegrams have already been made available, under certain conditions, to members and staff of the House Permanent Select Committee on Intelligence (HPSCI). Our reply of December 26 to HPSCI Chairman Combest's letter of September 28 explained the access procedures. We will make these documents available for review by staff of the International and Foreign Relations Committees under similar conditions. We will contact you regarding the remaining documents requested by you, Chairman Helms and Chairman Combest as soon as the Department's established document review procedures have been completed for those documents.

We share your commitment to ensuring that the mission of our armed forces in Haiti and of the larger UN force they support -- to provide a secure and stable environment for a peaceful, democratic political transition -- be completed successfully and on schedule. The continued training and deployment of a professional, apolitical, civilian Haitian police force is essential to this goal.

Nearly 5,000 newly recruited and trained Haitian National Police are due to be deployed by February, when the new Haitian president takes office, provided funding is forthcoming and the Department of Justice training and assistance to this new Haitian police force continues without interruption. With this Haitian public security capability in place, we are confident U.S. forces will be able to complete their mission in Haiti in February, and then return home. Your concurrence in providing the \$5 million allocated to support this Department of Justice training through the presidential transition and UNMIH withdrawal will greatly facilitate these efforts.

We hope this information has been useful to you. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

Wendy R. Sherman Assistant Secretary Legislative Affairs

Triendy R. Sherman

Enclosure: as stated

# Answers to Ouestions Contained in December 15 Letter from Chairmen Helms and Gilman to Secretary of State Christopher

1. <u>Question</u>: What individual or individuals were responsible for recruiting the 850 Guantanamo trainees? Have these persons received adequate training to function with the graduates of U.S.-run (sic) police academy? Does the fact that those persons were chosen for their political loyalty undermine efforts to prevent politicization of the police force?

Answer: The Guantanamo police trainees were originally destined to provide assistance to the troops of the Multinational Force (MNF). They were interviewed and selected at U.S. Government initiative by representatives of the then-exiled Government of Haiti in conjunction with DOD, JCS and State Department personnel. The U.S. and Haitian delegations established a written and oral interview procedure designed specifically to weed out, among other things, individuals who had held positions of influence with any political party or had previously been affiliated with any paramilitary group. Moreover, U.S. personnel assigned to the U.S. delegation worked to ensure that political orientation was not a selection criterion. Although the Guantanamo camp population did not represent a proportionate cross-section of political thought in Haiti, the fact that the U.S. retained (and often exercised) the right to veto selection of any applicant worked to prevent selection of trainees on the basis of political loyalty. The Department of Defense representative who headed the U.S. team advises that each trainee was finally approved by him and the Haitian Consul to Miami who headed the Haitian team.

The International Criminal Investigative Training Assistance Program of the U.S. Department of Justice (ICITAP) was originally directed to provide a three-day "Public Safety Trainee" course covering minimal skills necessary to assist MNF personnel. When deployment of the Guantanamo trainees to Haiti was delayed, their training was expanded to approximately 21 days. The training regime was never intended nor designed to qualify these individuals to serve as full-fledged police (hence our adoption of the term "police trainee) and included no training in firearms or other lethal weapons and only 4 hours of Haitian law (HNP graduates receive 160 hours). ICITAP believes that their training was adequate at best to perform traffic control, unarmed static security and similar less-skilled functions.

By contrast, HNP personnel were subjected to a much more rigorous selection process that was designed to be totally apolitical and merit-based. During testing and selection conducted by Government of Haiti (GOH) and ICITAP joint teams, candidates' files were designated only by number and selection was based on anonymous test score results to eliminate any chance of favoritism.

We are recommending to the GOH that assimilation of additional personnel, including Guantanamo trainees, into the HNP should be conducted in such a way as to ensure that the professional and apolitical character of the force is not undermined. Many of them have successfully performed static security and traffic control functions for some time. We believe that they should be admitted to become full-fledged sworn police officers only if they meet objective criteria applicable to all other HNP members.

2. Question: Will these 1,400 [sic] new personnel be screened (based on the educational background, psychological screening and background checks) that were required of academy graduates? Will these persons be required to complete the training and evaluation regime required of other academy graduates?

<u>Answer</u>: The 1,511 personnel transferred from the IPSF to the HNP consist of both former Haitian Armed Forces (FAd'H) personnel and Guantanamo trainees.

Virtually all of the FAd'H personnel were vetted in October 1994 prior to entering the IPSF. A few of the officers were never vetted, or did not pass the vetting process. We have strongly urged that any IPSF personnel transferred to the HNP should be screened again to ensure that no one with links to corruption, drugs or human rights violations is assimilated into the Haitian National Police. The U.S. Government is developing, in consultation with the UN civilian police and with UN/OAS International Civilian Mission human rights monitors, our own information on all of these individuals. will bring to the attention of the Haitian Government information on any individuals who fail to meet the above criteria, and strongly urge that they not be retained. In addition, we have recommended that any personnel that will receive full police powers as a regular member of the HNP should meet all educational and testing standards and complete the 16-week basic recruit training course, or the course for supervisors which we have begun to provide to personnel being recruited into higher level supervisory positions. In accordance with the Haitian police law, the 16-week training could be waived for any officers that received equivalent police training in foreign institutions as provided for in the Haitian Police Law.

3. Question: Are any of these individuals believed to be guilty of violations of human rights or other crimes? Are such violations grounds for rejecting these new members? Has a reasonable mechanism been put in place to carry out this sort of screening?

<u>Answer</u>: We will provide the Committee, as soon as possible, copies of comprehensive questions and answers on this issue provided by the Departments of State and Justice, the Central Intelligence Agency, and the Defense Intelligence Agency to the House Permanent Select Committee on Intelligence on or about October 31, 1995.

4. <u>Question</u>: Are ex-army personnel or Guantanamo recruits being assigned disproportionately to supervisorial roles within the police force? Are supervisors being chosen by merit?

Answer: Former FAd'H officers have been assigned to senior Headquarters leadership positions and about 100 former officers from the IPSF have been assigned to top field management positions. The Government of Haiti has been informed by the UN that many of these officers are considered by the UNCIVPOL — which has worked closely with them — to be the best of the IPSF, to have done a good job, and to fill an experience void in the HNP. The U.S. Government does not fully agree with this conclusion and has urged that objective, merit-based criteria be established for them and other supervisors. While we recognize that some of these ex-FAd'H officers represent the only experienced police leadership available to Haiti, we have nevertheless urged against too high a proportion of ex-FAd'H to new, civilian supervisors. In this regard, for the first time, selections made in November at the first-line and mid-level supervisory levels were merit-based. Additionally, a standardized examination for the position of Inspector Sergeant, developed in conjunction with ICITAP, was recently given to all HNP supervisors eligible for promotion to the officer ranks.

5. <u>Question</u>: Does the decision to integrate these persons into the Haitian National Police notwithstanding U.S. strong objections breach the Memorandum of Understanding for this program?

Answer: The MOU states that "the Government of Haiti retains the sovereign right to make all final decisions with respect to the police, including organization, development and training," while "the United States retains the sovereign right to determine the conditions under which it will continue to make assistance available." With respect to personnel matters, Annex B to the MOU provides that the Government of Haiti will "appoint qualified personnel to key management positions in the HNP, consistent with the Constitution and Police law, [and] assign personnel to fill professional and administrative positions in HNPTC [i.e., Haitian National Police Training Center] and HNP HQ."

Assimilation of some of the IPSF could be achieved consistent with the Police Law through assignment to such specialized and limited tasks as traffic control, building security guards and other support duties performed by "non-sworn" personnel. This is provided for in Article 58 of the Police law where reference is made to "employees who are not integrated into the hierarchy" (not officers or police agents). The Police Law also makes explicit provision for the inclusion of ex-army officers in the HNP. The officers would qualify if (a) they have received police training in a foreign police program and (b) they meet whatever objective criteria the GOH establishes pursuant to the police law for appointment of supervisors.

6. <u>Question</u>: What type of weapons or material support (with detailed descriptions of any firearms) have been provided to the Haitian National Police or the Interim Public Security Force under the U.S. assistance program?

Answer: The Department of Justice ICITAP program is prohibited from providing lethal weapons to recipient police services, including the HNP. Therefore, no U.S. assistance monies were expended on providing weapons or material support to the Government of Haiti under ICITAP's police development project.

Training: As part of the basic recruit training program, and pursuant to the Haitian Police Law which mandates only issuance of sidearms to HNP personnel, ICITAP secured 459 model 10/15 Smith and Wesson .38 caliber revolvers for firearms safety and firing practice. Of these weapons, 170 are inoperable — therefore non-lethal — and used for handling and familiarization purposes. The ICITAP training weapons were obtained from Defense Material Reutilization Command (DMRO — DoD surplus) and are retained as U.S. Government property and safeguarded by ICITAP personnel at all times. In addition, ICITAP has purchased 400 speedloaders, 200 sets of duty gear (belts, holsters, handcuff cases, baton rings, speedloader pouches), 3,500 dummy rounds of ammunition and 600,000 rounds of .38 caliber ammunition between April and December. All of this equipment is used in training, stored and secured by ICITAP personnel. ICITAP has provided no weaponry or ammunition to Government of Haiti personnel or representatives.

HNP Deployment: Service revolvers and ammunition for use by HNP sworn officers, following graduation from the U.S.-sponsored basic training, are provided by the Government of Haiti. The Government of Haiti secured approximately 500 .38 caliber revolvers directly from Smith and Wesson and an additional 5,400 model 15 Smith and Wesson .38 caliber revolvers and ammunition purchased from the DMRO at Crane Arsenal in Indiana. These weapons were sent from the Crane,

Ind., DMRO facility to the Fort Leonard Wood, Mo., HNP training site where they were used by ICITAP to train the cadets. The weapons were packed and shipped back to Haiti for distribution, by the Government of Haiti, to HNP cadets upon graduation and deployment. Inventory of these weapons is exclusively in the hands of the Government of Haiti. As of December 26, 1995, 2,155 remained, enough to equip the remaining cadets with a few left over. ICITAP has provided each HNP graduate with a baton, handcuffs, and uniform items, in addition to some vehicles (including bicycles), office furniture and supplies for police stations.

Regina trainees: Canadian-trained police cadets, the so-called Regina trainees, were issued new .9 mm automatic weapons by the Government of Haiti. ICITAP provided no training on these weapons.

IPSF: ICITAP provided a five-day training program for former FAd'H personnel entering the IPSF. The training focused on human rights and non-lethal police skills. No firearms training was provided nor was any material assistance given to the IPSF by ICITAP. Only very limited firearms instruction was provided to the IPSF by the Philippines contingent of the Multinational Force. It must be noted that as a result of the Haitian government's decree disbanding the IPSF, the former FAd'H array of automatic and semi-automatic military-type shoulder weapons and a mix of handguns, both revolvers and automatics, and any additional weapons and related material purchases for the IPSF made by the GOH (including purchases made in the United States) which were already in the possession of the Ministry of Justice are now probably included in the HNP arsenal.

7. <u>Question</u>: Does any U.S. agency have information implicating any of the individuals involved in the Haitian government's decision regarding these forces (including but not limited to Dany Toussaint, Pierre Cherubin, or Jean-Marie Fourel Celestin) in human rights violations or other crimes or corruption.

Answer: We will provide to the Committee, as soon as possible, copies of comprehensive questions and answers on this issue provided by the Departments of State and Justice, the Central Intelligence Agency, and the Defense Intelligence Agency to the House Permanent Select Committee on Intelligence on or about October 31, 1995.

HAITI\_DESK

PHUM->

Port-au-Prince, July 11, 1995

#### Dear Mister President:

Attorney General Janet Reno has asked me to write you to confirm the following points of agreement reached in our July 3 meeting with Associate Deputy Attorney General Seth Waxman and Deputy Assistant FBI Director William Perry:

- The FBI will proceed with the Bertin investigation, pursuant to the following guidelines:
- (a) While the FBI of course reports to the Attorney General of the United States, the investigation is being conducted for the benefit and assistance of the Haitian Ministry of Justice. At the conclusion of the investigation, a report will be provided to the Haitian Government. In the interim, the FBI team will continue to coordinate when and as requested with the Juge d'Instruction to whom the Bertin assassination investigation has been assigned.
- (b) The FBI may solicit and conduct interviews of any individual it believes may have relevant information, without any requirement of advance notice to the Haitian Government or any Haitian Government official and without any requirement that officials of, or attorneys for, the Haitian Government be present during interviews.

His Excellency
Jean-Bertrand Aristide,
President of the
Republic of Haiti.

- 2 -

- (c) The FBI will honor any request by an individual who wishes to be accompanied during an interview by an attorney representing the individual's personal interest -- so long as that attorney is not also representing the interest of the Maitian Government.
- (d) Before interviewing any Haitian Government official, the FBI will notify the individual that (a) if he wishes, he may be accompanied by an attorney representing his personal interest, and (b) if he wishes, the Government of Haiti will provide him with such an attorney without charge. If an individual wishes an ettorney, the interview will be arranged at a time and place at which the attorney can be present (so long as the attorney is not also representing the Government of Haiti). If the individual does not wish an attorney, the interview will proceed at a mutually agreeable time and place.
- 2. The FBI vill not institute investigations into alleged political assassinations under the Cedras regime. Instead, the Felony Trial Project, in which both U.S. prosecutors and FBI agents participate, is available upon request and will assist Haitian law enforcement authorities in investigating and prosecuting these other assassinations.
- The FBI Bertin investigation should proceed fully, independent of the progress on any other investigations.
- 4. The Government of Haiti will promptly reply in writing to my letter to you of April 24, 1995, regarding the legal status of the FBI agents operating in Haiti.

Once again I want to assure you of my Government's continued willingness to work with you to show that in the new Haiti, serious crimes can and will be investigated and prosecuted, and the guilty punished.

Kindest regards.

Respectfully,
Thellin Cocy Suring

William Lacy Swing

## Ambassador of the United States of America

Port-au-Prince, July 27, 1995

Dear Mr. President:

Thank you for your letter dated July 13, 1995, regarding the FBI's participation in the investigation of the Bertin case. It is essential that we proceed in this important and delicate matter in full agreement. I appreciate, therefore, your quick response to my letter of July 11th. To ensure there is no misunderstanding, I wish to reconfirm the following points:

As I mentioned in my letter, the United States understands and supports the need for the Haitian justice system to investigate and prosecute the many crimes that occurred during the Cedras regime. The United States Government remains prepared to assist in this effort, through the framework of the Felony Trial Project, which was established last Spring, in cooperation with Minister of Justice Exume, for this purpose. (To date, however, the Project has not been referred any cases.) The FBI cannot "extend" its efforts in the Bertin case "to all victims of violent crime in Haiti." That would require an expansion of resources for the purpose far beyond our capability to commit.

In my July 11th letter, I set forward our understanding based upon our July 3rd discussion, of the manner in which the FBI should interact with the Haitian Ministry of Justice in the conduct of interviews. I understand from your letter that these procedures are satisfactory.

Needless to say, the United States agrees entirely on the need to respect Haitian law and the dignity of the Haitian people. I assure you that the

His Excellency
Jean Bertrand Aristide,
President of the Republic of Haiti.

FBI, like other elements of the American Government working in Haiti, has done so and will continue to do so. Should you have or receive any information to the contrary, I ask that you bring it to my immediate attention. Similarly, if there are concerns you feel the Haitian people have with regards to the FBI's role, I ask that you advise me immediately. For our part, we believe that the FBI's participation in this investigation has helped reduce that acute and widespread sense of insecurity which followed on the Bertin assassination, and threatened to undermine the secure and stable environment in Haiti which you and we have worked so hard to create.

Finally, we would appreciate an early reply to our report of April 24, 1994, regarding the legal status of the FBI agents operating in Haiti. It is important, particularly in light of the sensitiveness expressed in your most recent letter, that such matters be clearly agreed between us.

Kinded regards.

Sincerely,

William Lacy Swing



### DEPARTMENT OF DEFENSE Headquarters, Stuttinational Forces Port-au-Prince, Halti, 09383-0090

March 22, 1995

Commanding General

Honorable Jean Joseph Exume Minister of Justice Port-au-Prince Haiti

Dear Minister Exume:

The Multinations' Forces have recently been presented with allegations and evidence toncerning a possible conspiracy to murder a prominent attorney who has been critical of the current Government. Although we have not fully investigated all aspects of this case at the present time, the following information is provided so that your Government may immediately undertuke an appropriate investigation of this matter. Because another Minister of the Government is alleged to have been involved in this conspiracy, I have also totified President Aristide of this matter.

An MNF contract interpreter named Mr. Claude Donge provided information that he had recently been given a weapon (an uzi) by Mr. Patric Moise. He also told us that Mr. Moise related that he had been hired by Minister of the Interior Beaultrun to assassinate Mirelle Durocher Bertin. He then surrendered the weapon to the MNF. Patric Moise is known to the Multinational Forces to have both the training and capacity to commit such an act. Mr. Douge told us that Mr. Moise and others would be coming by his house during last Sunday evening to conduct reconnaissance of Ms. Bertin's house and workplace. Mr. Douge told us that Patric and the others would be in a gray Isuzu Trooper. At the appointed time and place, we apprehended Mr. Moise and others in a gray Isuzu Trooper as they arrived at Douge's home. The vehicle was registered to the Ministry of the Interior. Mr. Patric Moise was accompanied by his brother Eddi, Mr. Micheller Nicholas, and Mr. Jean Joseph St. Claire. When apprehended, these inflividuals had papers in their possession which contained the telephone number of Minister Beaubrun and Ms. Bertin's name on a list of lawyers who may have participated at the coup d'etat.

Mr. Douge's information was partially confirmed by his wife, who when independently questioned, related that Mr. Douge had told her of the plot, and by Mr. Nicholas, who told us that he went with Patric Moise to pick up the Isuzu Trooper directly from Minister Beautrum (who Nicholas said handed the keys to Patric Moise on Saturday night, Murch 18). Mr. Nicholas and Mr. St. Claire also confirmed that Mr. Patric Moise met the Minister and others at the Ministey of the Interior throughout this past week.

The Multinational Forces have detained Mr. Patrle Molse, Mr. Eddl Molse, Mr. Nicholas, and Mr. St. Claire at police station 2. Mr. Douge and his wife have been detained at on. of our facilities, although the MNF does not believe that Mrs. Douge is other than a witness in this case. The MNF will make these individuals available for such investigation as you deem warranted and will also provide you with access to the evidence in this case (decuments, car, and weapon).

We do not know whether or not these allegations are true. However, the fact that a Minister has been implicated is especially serious. These allegations and initial questioning results are being reported through channels and will come to the attention of U.S. officials. I have also self-tend the United States Ambussador of this matter. For that reason, I ask that your line to their of this matter be swift and complete and that the Multinational Forces be provided with the results as soon as possible. We also believe it would be appropriate for your monify the intended victim in this case of the threat so that she might ake appropriate measure for the results as the results in this case of the threat so that she might ake appropriate measure for the result-protection.

As always, the Multinational Forces will provide such assistance as may be appropriate spon your request.

Sincerely,

Georgé A. Fisher Major General, U.S. Army

Commanding General

Port-au-Prince, March 31st, 1995

Senator Jesse Helms The United State Senate. Weshington, D.C. PAY We-(202) 214-7588

Honorable Senator,

Knowing your interest for the establishment of the true democracy in Haiti, I take the decision to inform you of the followings:

As the spouse of Mrs Miraille Durocher Bertin who was covardly assassinated on March 28, 1995, I want to bring forward to your attention that it is false that the haitian authorities ever informed my wife that there was a threat on her life and that she refused any protection offered to her.

I swear that neither I or any member of the close family was aware of such initiative. All we know is that her uncle was approached by a friend in the name of M. Warner Jérome who informed him that they were about to make in arrest warrant on Mireille, a name, and advise her to leave the country if she did not want to be jailed.

My wife refused saying that she had no reason to leave the country because she had not broken any law. She was conforted in this decision by her uncls Rudolph LAMOTHE, of the United Armed Porces on duty at that time in Reiti, that democracy will prevail for all in the country.

Also on March 23, 1995, the Minister of Justice, Mr. Exume confirmed to her the rumor of that warrant and gave her his telephone Number in case she wented any help.

sand all the family raquest your support to clarify this horrible crime.

Sincerely Yours,

Jean Bertin Impasse Hilaire

Montagne Noire Pétion-Ville, Haiti, W.I. Phone 509-574829

BENJAMIN A GILMAN, NEW YORK CHARMAN

WILLIAM FOODUNG PROTESTANDA AMMÉS A LÉGAT DAMÉS A LÉGAT DA TOBY ROTH WECOMEN TOBY ROTH WECOMEN TOBY ROTH WECOMEN TOBY ROTH WECOMEN TOBY TO THE WEST AND THE WEST CHIEF TO THE WEST AND THE WEST LEGAT TO THE WEST AND THE WEST LEGAT TO THE WEST AND THE WEST LEGAT TO THE WEST AND THE WEST AND THE LEGAT TO THE WEST AND THE WEST AND THE LEGAT THE WEST AND THE W

HCHARO J GARON

One Hundred fourth Congress

# Congress of the United States Committee on International Relations

House of Representatives
Washington, DC 20515

January 15, 1996

LEE H HAMILTON INDIANA

MICHAEL N VAN DUSEN

Ms. Wendy Sherman Assistant Secretary of State for Legislative Affairs Department of State Washington, D.C. 20520

Dear Ms. Sherman:

Enclosed are written questions for Assistant Secretary Robert Gelbard and Mr. James Dobbins, pursuant to their sworn testimony at a January 4 Committee hearing on Haiti Human Rights and Police Issues. We are also providing the unedited transcript of this hearing for any necessary editing by these witnesses.

With respect to these submitted questions, I ask that you remind these witnesses that, as a supplement to their testimony offered under oath before the Committee, their written replies will be considered as sworn testimony.

Because of the urgency of the Committee's ongoing inquiry into these issues, we intend to complete the record of this hearing as soon as possible. Therefore, we ask that written replies to these questions be submitted no later than January 19. Any questions regarding the record of this hearing should be directed to Ms. Parker Brent of the Committee staff, 202-225-5021.

With best wishes.

BENJAMIN A. GILMAN

Chairman

Enclosures - as stated BAG/rfn

### OUESTIONS FOR AMBASSADOR ROBERT GELBARD

We understand that U.S. officials have informed their Haitian counterparts that we have evidence of human rights violations and other criminality on the part of Dany Toussaint, Medard Joseph, Pierre Cherubin, Richard Salomon, et al, and that we would suspend police assistance if such persons were given responsibility for Haiti's security forces. Is this description accurate? Have we essentially conditioned future U.S. police assistance on Haitian compliance with this requirement? Provide the names of the individuals about whom U.S. officials have raised these concerns to date as well as a summary of the reports of criminality by each of these persons.

Have any of the individuals associated directly or indirectly with the Special Investigative Unit been implicated in human rights violations or other criminality? For example, is it correct that Dany Toussaint has had or may have direct or indirect supervisorial role over the Unit?

### QUESTIONS FOR AMBASSADOR JAMES DOBBINS

When did you and other State Department officials first become aware of the evidence collected by the FBI that linked the Bertin killing to other execution-style killings?

During your January 4 testimony, you twice cited several attempts from April to September 1995 to arrange a briefing for State Department officials on the FBI's Bertin investigation. For the record, please provide correspondence or telephone logs to substantiate any such requests within the State Department or with the National Security Council, the Justice Department, or other U.S. government agency.

What was the decision on whether such briefings should take place? If and when such briefings were denied, who decided that such briefings should not take place, and what was the reason for this decision? To your knowledge, had any National Security Council or other White House official been briefed on the substantive results of the FBI's findings prior to this information being shared with you or any other State Department official? If so, explain your assumptions and provide relevant dates. When such a briefing was arranged for you and State Department officials, who decided that such a briefing should take place?

Were you ever instructed by any U.S. government official to withhold information from Congress on the FBI's findings in the Bertin killing? If so, please explain.

On another subject covered during the October 12 Subcommittee hearing, on that date, in response to a question on the Haitian government's commitment to privatization, you dismissed the suggestion that the Haitian government was going back on its commitment to privatization. Just after that hearing, however, we heard that the Haitian privatization plan was put on hold before October 12 and that Prime Minister had told Ambassador Swing that he was quitting because President Aristide would not back up his economic plan, which included privatization.

When you reassured the Subcommittee about the Haitian commitment to privatization, did you know at that time that Prime Minister Smarck Michel had told Ambassador Swing that he was quitting on a date certain over that very issue? Don't you consider it important that the head of government was quitting because of the very issue that Subcommittee Chairman Dan Burton had raised with you?

What is the status of Haiti's Truth Commission? Has the Commission produced any results? Is the Commission receiving adequate resources to function effectively? Has the United States provided or considered providing any support to the Commission?

Please provide an update of all incremental costs associated with U.S. operations in Haiti.

BENJAMIN A GILMAN, New York CHARMAN

WILLIAM F COOQUING Privatyvania
1004 POINT Wickcome
1004 STORM POINT WICKCOME
151 DOI GALLGUY, C.A. POINTA
151

RICHARD J GARON CHIEF OF SYAFF One Hundred fourth Congress

# Congress of the United States

Committee on International Relations

House of Representatives Washington, DC 20515

January 15, 1996

LEE'H HAMILTON INDUMA

SAM CEJORNEON COMMETTED TO THE PROPERTY OF THE

MICHAEL H VAN DUSEN

Mr. Louis J. Freeh Director Federal Bureau of Investigation J. Edgar Hoover Building 9th Street and Pennsylvania Avenue, N.W. Washington, D.C. 20535

Dear Mr. Director:

Enclosed are written questions for Mr. Bill Perry, pursuant to his sworn testimony at a January 4 Committee hearing on Haiti Human Rights and Police Issues. We are also providing the unedited transcript of this hearing for any necessary editing by this witness.

With respect to these submitted questions, I ask that you remind Mr. Perry that, as a supplement to his testimony offered under oath before the Committee, his written replies will be considered as sworn testimony.

Because of the urgency of the Committee's ongoing inquiry into these issues, we intend to complete the record of this hearing as soon as possible. Therefore, we ask that written replies to these questions be submitted no later than January 19. Any questions regarding the record of this hearing should be directed to Ms. Parker Brent of the Committee staff, 202-225-5021.

With best wishes,

Sincerely.

BENJAMIN A. GILMAN

Chairman

Enclosures - as stated BAG/rfn

### QUESTIONS FOR MR. BILL PERRY ON THE FBI INVESTIGATION

Could you describe the FBI's findings in the Bertin case and whether the Bertin killing was linked to other execution-style murders? Which other murders were linked by this evidence?

Has the Bureau briefed Haiti's new special investigative unit on its findings on the Bertin killing and/or the links to other murders? Have you turned over evidence collected?

Do you believe the FBI could advance this investigation if it were to return to Haiti with assurances of the government that it would cooperate? What problems do you anticipate if the FBI were to return to resume its investigation?

Please provide for the record a chronology on the FBI's investigation into the Bertin murder, including mention of any briefings of any U.S. government officials by the FBI on its inquiry. Specifically, when did the FBI first brief NSC and State Department officials in Washington, D.C. on the links between the Bertin killings and others? Who at the NSC and State was first provided this information?

Were you or any other official of the FBI aware of Ambassador James Dobbins' requests to the National Security Council for an FBI briefing on the Bertin inquiry (to which he alluded in his January 4 testimony)? If so, when did these requests occur? What was the decision on whether such briefings should take place? When such briefings were denied, who ultimately decided that such briefings should not take place, and what was the reason for this decision? When such a briefing was arranged, who ultimately decided that such a briefing should take place?

Were there threats or intimidation of your agents or potential witnesses by officials of the Haitian Government? Were any of these threats traced to officials of the Haitian Government?

Was the FBI concerned that Haitian Government retained lawyers were "coaching" witnesses or suspects in the Bertin investigation? On what do you base this conclusion? Which lawyers, providing names where available, were involved in such behavior?

Has anyone at the State Department complained or expressed any concern to the Justice Department about briefings that you were providing to Members of Congress and their staffs? If so, what was the basis of their complaints? Are you aware of any effort by the State Department to encourage the FBI to keep its findings from the Congress?

Has the State Department reviewed, commented on, or changed the FBI's prepared testimony or any prepared Q&A that you offered at the January 4 hearing?

One Mondred fourth Congress

## Congress of the United States

Committee on International Relations

House of Representations Washington, DC 20515

January 15, 1996

Mr. Andrew Fois Assistant Attorney General Office of Legislative Affairs Department of Justice Main Justice Building, Room 1145 10th and Constitution Ave., N.W. Washington, D.C. 20530

Dear Mr. Fois:

Enclosed are written questions for Mr. Seth Waxman, pursuant to his sworn testimony at a January 4 Committee hearing on Haiti Human Rights and Police Issues. We are also providing the unedited transcript of this hearing for any necessary editing by this witness.

With respect to these submitted questions, I ask that you remind Mr. Waxman that, as a supplement to his testimony offered under oath before the Committee, his written replies will be considered as sworn testimony.

Because of the urgency of the Committee's ongoing inquiry into these issues, we intend to complete the record of this hearing as soon as possible. Therefore, we ask that written replies to these questions be submitted no later than January 19. Any questions regarding the record of this hearing should be directed to Ms. Parker Brent of the Committee staff, 202-225-5021.

With best wishes,

Sincerely

A. GILMAN

Chairman

Enclosures - as stated BAG/rfn

#### QUESTIONS FOR MR. SETH WAXMAN

To the best of your knowledge, when did the Department of Justice or FBI first brief NSC and State Department officials in Washington, D.C. on the links between the Bertin killings and others? Who at the NSC and State was first provided this information?

Were you or any other official of the Justice Department aware of Ambassador James Dobbins' requests to the National Security Council for an FBI briefing on the Bertin inquiry (to which he alluded in his January 4 testimony)? Did the State Department make any such requests to the Justice Department or the FBI? If so, when did these requests to the NSC, Justice Department, or FBI occur? What was the decision on whether such briefings of State Department officials should take place? When such briefings were denied, who ultimately decided that such briefing should not take place, and what was the reason for this decision? When such a briefing was arranged, who ultimately decided that such a briefing should take place?

Provide for the record all correspondence between U.S. government officials and Haitian government officials (or their agents) regarding the FBI's Bertin inquiry.

Under what circumstances, conditions, and/or parameters would the Justice Department support the return of the FBI to Haiti to complete its investigation into the Bertin killing?

Has the Justice Department formulated specific criteria and guidelines regarding the FBI's participation in investigations abroad in cases in which the FBI has no criminal or investigative jurisdiction (as was the case in the Bertin killing)? If so, what are they?

What are the Justice Department's practices, procedures, and requirements as to providing timely warning to private individuals who may be the target of specific death threats based upon any credible information that may come to the Department's attention during the course of an investigation or otherwise?

Question for the Record Submitted to Robert Gelbard House International Relations Committee January 4, 1996 (Updated to reflect events a/o 2/29/96)

- Q. Have any of the individuals associated directly or indirectly with the Special Investigative Unit been implicated in human rights violations or other criminality? For example, is it correct that Dany Toussaint has had or may have direct or indirect supervisorial role over the Unit?
- A. To the best of our knowledge, none of the police officers who have been attached to the special investigative unit (SIU), nor any of the prosecutors or investigative magistrates who have supervised them, has been implicated in human rights violations or other criminality.

Dany Toussaint, as head of the Judicial Police prior to his January 16 resignation, did not have supervisorial authority over the SIU's investigations. Nevertheless, he did have administrative responsibility over the police officers seconded to the SIU, a fact which of course concerned us. In practice, however, Toussaint never exercised his authority over these police officers. We understand in this connection from U.S. Department of Justice personnel assigned to police headquarters that, during his few weeks as head of the Judicial Police, Toussaint never appeared at police headquarters.

- 4 -

Q. During your January 4 testimony, you twice cited several attempts from April to September 1995 to arrange a briefing for State Department officials on the FBI's Bertin investigation. For the record, please provide correspondence or telephone logs to substantiate any such requests within the State Department or with the National Security Council, the Justice Department, or other U.S. greenment agency.

What was the decision on whether such briefings should take place? If and when such briefings were denied, who decided that such briefings should not take place, and what was the reason for this decision? To your knowledge, had any National Security Council or other White House official been briefed in the substantive results of the FBI's findings prior to this information being shared with concern any other State Department official? If so, explain your assumptions and provide relevant dates. When such a briefing was auranged for you and State Department officials, who decided that such a briefing should take place?

A. I sought, throughout the summer of 1995, to secure information regarding the Fertin and other execution style killings in Haiti. I encouraged active Embass; and other agency collection and reporting on this subject. During my visit to Port-au-Erince on July 3, along with Associate Deput; Attorney General Waxman, and FEL Deputy Assistant Director Perry, I had been asked by Mr. Warman to absent myself from a meeting he and Mr. Perry held with the local FEL team where these issues were to be discussed. I therefore turned to the NSC Staff for assistance in securing information from the FBI on the results of their investigation.

- 5 -

To this end, I asked the Chairman of the NSC Executive

Committee on Haiti, Mr. Richard Clarke, to arrange for the FBI

to review for interested officials from State and other

agencies the status and findings of their investigation. I

made this request several times, in the July/September

timeframe. Mr. Tarke agreed to arrange such a briefing, but
subsequently told me that the Department of Justice and the FBI

believed that such an exchange would be inappropriate, given
the ongoing nature of their investigation. As late as

September, I raised the issue again in the course of an
interagency meeting in the White House Situation Poom, during
which I suggested that the FFI be asked to brief that group the Executive Committee on Haiting on its investigation. I

was told that such a step was, for the time being,
inappropriate.

I also sought to ascertain whether other Administration officials, including Mr. Clarke, Ambassador Gellard, Ambassador Swing, and Mr. Wasman, had been briefed by the FBI on the results of its investigation, and was told that they had not. Mr. Clarke had told me that neither he, nor insofar as he was aware, any other White House official had been so informed. Assistant Secretary Robert Gelbard, the State Department's

- 6 -

senior liaison with the U.S. law enforcement community, told me that he had picked up bits and pieces on the FBI's efforts, but had not been fully informed by the Bureau on the results of its investigation. Our Chief of Mission in Port-au-Prince,

Ambassador Swing, said that he had met occasionally with FBI representatives and was familiar with the information which had been made available to his staff. He said that he had not been briefed in detail by the FBI on their findings, however, and had not pressed for more complete information because he realized the investigation was still in progress. Ambassador Swing told me that he consequently did not feel that he had a full picture of the results of the FBI investigation.

Associate Deputy Attorney General Warman told me that even he did not have substantial information on what leads and information the FBI was developing.

Throughout 1995, Mr. Clarke and I normally spoke with each other about Haiti related issues several times each day. The bulk of these calls can be documented, but our records make no mention of the specific subjects discussed. I have, however, shown this answer to Mr. Clarke, Ambassador Gelbard, Mr. Waxman, Mr. Perry, and Ambassador Swing. All concur in its accuracy as regards their respective conversations with me.

- 7 -

Throughout the summer of 1995, I fully understood why the FBI was reluctant to disseminate more widely than necessary for the conduct of it investigation any information which might compromise its results or threaten its sources. In fact, in the July 3 meeting with President Aristide, I responded to his obvious unhappiness at his own lack of information on the ongoing results of the Bertin case by telling him that I and other U.S. Executive Branch officials outside the law enforcement community were similarly uninformed. I was thus able to assure him, in all candot, that the FBI was seeking to maintain the intentity of the Bertin investigation as they would one conducted in similar circumstances in the United States.

Thus, I accepted the appropriateness of what I understood to be a "need to know" criteria to information on the findings of an ongoing investigation, even if I chafed somewhat at its application to me. At the same time, the Administration was intent upon addressing the wider phenomenon of rememerging political violence in Haiti. It had, therefore, strongly unged the Government of Haiti to establish a "Special Investigative Unit" to pursue inquiries into all the execution style killings and possible links among them. On October 10, the Government of Haiti established such a unit. I announced this step in the course of my October 12 testimony to the Western Hemisphere Subcommittee of the HIRC.

- 8 -

One of the reasons I was pleased to be able to announce the formation of the Haitian Special Investigative Unit in my testimony of October 12 was the fact that such a step was required of the Haitians to meet the terms of then pending U.S. legislation (the "Dole Amendment" to the Foreign Operations Bill), on which the Department had worked closely with Majority and Minority Senate staff, including that of the Majority Leader. That Amendment was proposed following a majority staff visit to Haiti duting which the Embassy had provided briefings on the human rights situation and the available information concerning responsibility for the execution-style killings. The State Department also facilitated a meeting for the Senate Majority staff with FBI personnel in Haiti to discuss the problems it had encountered in its investigation.

When I testified on October 12, I was aware of these exchanges with the majority and minority staff in the Senate. I was also aware that both Houses had subsequently passed the legislation with which these exchanges had dealt. I now realize that the Department had been remiss in not ensuring that the House International Relations Committee staff was kept similarly informed.

- 9 -

On October 10, the Government of Haiti decided to establish its Special Investigative Unit (SIU). By that time, the FBI had determined that its investigation had come to the end of its useful life. Thus, with the creation of the SIU, the Administration decided to transfer the results of the FBI investigation to appropriate Haitian authorities. The NSC staff initiated a series of sessions among State, Justice, CIA, DOD and FBI officials in which we exchanged information on the Bertin and related cases and discussed the transfer of the results of the FBI's inquiry. Four such meetings took place, between October 12 and October 30. These sessions also addressed responses to a series of questions on the Bertin and related issues which were provided to the House Select Committee on Intelligence in October, in preparation for a hearing planned, but later cancelled, for November 1.

Those October interagency meetings were the first opportunity the Department of State had had to meet with the FBI to supplement and correct the information contained in earlier Embassy reporting on the FBI's investigation, to explore the degree to which FBI experts regarded the physical evidence the Bureau had developed as conclusive, to determine the nature and extent of FBI information implicating

- 10 -

individuals in the Haitian Government security structure in the Bertin and other cases, and to clarify the degree to which that FBI information supplemented, corroborated, duplicated and/or conflicted with information from other agency sources.

Information on the Bertin case came from a number of sources besides the FBI. This information was conveyed to the Congress through intelligence products which incorporated State Department and other agency reporting, and were the subject of staff level discussions with Department of State representatives. I have already noted the meeting which the Department facilitated between Senate majority staff and the FBI on the problems encountered by the FBI in Haiti, and the Embassy's briefing on execution style killings. Staff level briefings including Department of State representatives also discussed with HIPC staff the possible implication of senior members of the Haitian security force in some of these killings. On August 15, a report was provided the House International Relations Committee and other appropriate Committees via intelligence channels which drew on Embassy and other Agency reporting, dealt with the problem of execution style killings, discussed the possible involvement in these killings of senior Haitian security force officials, and

- 11 -

specifically cited evidence linking the Bertin case to other execution style killings. The information on evidentiary links among these killings contained in this August 15 report was more accurate than that contained in the Embassy's August 23 telegram.

As I believe the above chronology demonstrates, the Department of State had not, prior to October 12, secured from the FBI any confirmation, correction, or amplification of earlier, and, as it proved, somewhat inaccurate, Embassy reporting on the Bertin case. When Chairman Bunton asked me about the FBI's findings, I therefore knew my information on the subject to be incomplete, unconfirmed and probably in some measure wrong. I am afraid that I allowed my continued frustration at this state of affairs to color my answer. I now recognize that I should have responded to the Chairman's question by noting my information on the FBI's findings was, at that point, incomplete and third band, advising that the FBJ would be a more reliable source of information, but stating that I would be prepared to share with the Committee what I did know about the case, which was derived largely from classified intelligence sources, in some appropriate setting.

- 12 -

Q. Were you ever instructed by any U.S. government official to withhold information from Congress on the FBI's findings in the Bertin killing? If so, please explain.

A. No, I was not.

regarded information on their findings in the Bertin case to be sensitive, and that they fell that dissemination of such information could threaten the prospects for that investigation, and the sources of their information. I also understood that the FBI and other Federal law enforcement agencies did not normally chare information on the substantive result of ongoing investigations with either the Congress, on other elements of the Emecutive Branch. Insofar as I am ware, however, no one in the Administration anticipated that a State-Department witness might be asked to testify on the findings of an ongoing FBI investigation. Thus no one adviced me how I should answer such a question, nor del I think to seek such advice. Had I done so, I would, I am certain, have been advised to refer such inquiries to the responsible agency.

That is how the Department handled an inquiry on the subject from the House Select Committee on Intelligence, which

- 13 -

was received a few days later. That Committee sent a series of questions regarding the Bertin investigation and related issues to State, as we'll is to Justice, DOD, CIA and the FBI. State referred to the FBI questions related to the FBI's findings, while the FBI and Department of Justice referred to State questions dealing primarily with this Department's responsibilities or activities. In this manner, the Administration provided comprehensive and detailed answers to all the Committee questions on October 31.

- 14 -

Q. On another subject covered during the October 12 Subcommittee hearing, on that date, in response to a question on the Haitian government's commitment to privatization, you dismissed the suggestion that the Haitian government was going back on its commitment to privatization. Just after that hearing, however, we heard that the Haitian privatization plan was put on hold before October 12 and that Prime Minister had told Ambassador Swing that he was quitting because President Aristide would ret back up his economic plan, which included privatization.

When you reassured the Subcommittee about the Haitian commitment to privatization, did you know at that time that Prime Minister Smarck Michel had told Ambassador Swing that he was quitting on a date certain over that very issue? Don't you consider it important that the head of government was quitting because of the very issue Subcommittee Chairman Dan Turton had traised with you?

A. I cannot first anything in my testimony of October 12 which could have reassured the Committee on the prospects for privatization in Haiti. In my prepared presentation, I did not address privatization. I did, however, state that Haiti's economic renewal remained fragile, and noted that new investment was awaiting the results of Haiti's elections.

In response to a question regarding a statement attributed to the then Haitian Finance Minister Michelle Rey calling privatization a "poison" which would "kill the Haitian people", I responded, "I am confident she never said that. Maybe a misidentification, that could be. The Government has a wide spectrum of opinion, and it is possible that some other Minister said that."

- 15 -

In stating that a wide range of views existed in the Haitian Government on privatization, and acknowledging that a member of the Haitian Government (other than the Finance Minister, a strong supporter of privatization) could well have publicly called privatization a poison which would kill the Haitian people, I certainly intended to convey to the Committee that this policy was highly controversial. I do not feel that any other inference can be been drawn from my testimony.

Shortly prior to my October 1.7 testimony, the Department had learned that Frime Minister Michel had told Ambassador Swing that he was resigning his post effective the following week. This was the third time in as many months that the Prime Minister had threatened such a step. Ambassador Swing and other senior U.C. officials were actively seeking to dissuade the Prime Minister from carrying through on his intentions, as we had successfully done on the two prior occasions.

Prime Minister Michel clearly remarded his exchange with our Ambassador on this subject as a private diplomatic communication, and expected that it would remain confidential. He himself had made no public announcement about his resignation, and he had stressed to Ambassador Swing that he did not intend to do so until the following week.

- 16 -

Information on Prime Minister Michel's conversation with Ambassador Swing, and his intention to resign was made available through intelligence channels to the House International Relations Committee on October 11, and again on October 12, that is to say roughly coincident with receipt of the same information by the Department of State.

When questioned about Mrs. Rey's attitude toward privatization, I tailed, I am afraid, to make a connection to the Prime Minister's impending resignation, as perhaps I should have. I could not have appropriately referred to then still classified information about the Frime Minister's intentions in an open hearing, but I do regret that I did not find an opportunity immediately before or after the hearing to ensure that the Chairman and Committee staff were aware that the Prime Minister had threatened to resign, and that the Administration was doing its best to forestall such a development.

- 17 -

Q. What is the status of Haiti's Truth Commission? Has the Commission produced any results? Is the Commission receiving adequate resources to function effectively? Has the United States provided es considered providing any support to the Commission?

A. The Presidential Commission on Truth and Justice completed the investigatory phase of its work in December 1995.

Commission members are now preparing a final report analyzing their findings and offering recommendations. The report is scheduled to be published in late January 1996, and our Embassy in Port-au-Prince has requested copies at distribution.

Commission members have told Embassy officials that the report probably will call for compensation to past victims and suggest reforms to prevent future human rights abuses.

In mid-October 1995, a decision was made to grant the Truth and Justice Commission \$50,000 through USAID. USAID attempted to provide the funds through a mechanism established with the United Nations Development Program (UNDP). Only after weeks of pursuing this avenue, did it become apparent that it would not be possible since the structure of the UNDP mechanism was not compatible with USG grant requirements.

USAID subsequently sought to grant the Commission \$50,000 worth of material assistance in the form of computers, rental vehicles, generators, and office equipment. The Commission and

- 18 -

USAID were unable to finalize the agreement for material assistance in a timely manner, and the Commission subsequently purchased the equipment with existing funds.

In Late November, the Commission notified USAID that they did not need the \$50,000 grant of material, and requested assistance in gaining access to information compiled in the USAID affiliated Human Rights Fund database. USAID was able to arrange this by early becember.

## RESPONSES OF DEPUTY ASSISTANT DIRECTOR WILLIAM E. PERRY TO QUESTIONS FROM

# THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS REGARDING THE FBI INVESTIGATION IN HAITI

(1) Could you describe the FBI's findings in the Bertin case and whether the Bertin killing was linked to other execution-style murders? Which other murders were linked by this evidence?

In my formal written statement, I have outlined generally the course of the FBI's investigation. At this juncture, we have not obtained sufficient information to identify any specific individuals to whom we could attribute responsibility either for the actual shootings or for directing or conspiring in the homicides. We do believe, however, that we have conducted sufficient investigation to conclude that it is unlikely that any of the following were motives for the murder: (1) the victims were the target of a robbery attempt; (2) the victims were targeted as a result of a dispute with a spouse or associate; and (3) the victims were targeted because of involvement in drug trafficking or other criminal activity. In our view, the question of whether the murder of Mrs. Bertin was politically motivated remains open, and should be pursued in any future investigation by Haitian authorities. Also, it is the FBI's view that certain members of the IPSF and Palace Security should be questioned to determine whether they may have information about the murders.

The FBI's investigation into the Bertin and Baillergeau homicides did develop some definitive evidence linking those murders to other execution-style murders that occurred in Haiti. However, the specific evidence establishing those links is considered sensitive law enforcement information. To date, it has only been provided to Congress in the context of a classified document. It is my understanding that the International Relations Committee will be provided a copy of that classified material describing the investigative information pertaining to those links.

(2) Has the Bureau briefed Haiti's new special investigative unit on its findings on the Bertin killing and/or the links to other murders? Have you turned over evidence collected?

FBI personnel involved in the investigation provided a briefing to Haiti's new Special Investigative Unit on the FBI's findings in the Bertin/Baillergeau murder investigation. This briefing took place in Port-Au-Prince, Haiti on 12/21/95. At that time, the FBI provided reports of forensic laboratory examinations pertinent to the investigation, as well as autopsy reports and crime scene photographs. Physical evidence collected by the FBI continues to remain in the possession of the FBI. The information provided to the SIU included the information I have referred to previously that definitively linked the Bertin murders to other murders.

(3) Do you believe the FBI could advance this investigation if it were to return to Haiti with assurances of the government that it would cooperate? What problems do you anticipate if the FBI were to return to resume its investigation?

At this juncture in the investigation, it would not be productive for the FBI to return to Haiti to resume the investigation. A primary reason for the FBI's involvement in this matter was the perceived lack of a credible Haitian investigative structure to pursue the investigation, and certainly to conduct the crime scene and forensic work required immediately after the homicides had taken place.

A Special Investigative Unit (SIU) has now been established in Haiti to pursue the investigation of several high-profile murders, including the Bertin and Baillergeau homicides. As noted above, FBI personnel have provided the SIU with a briefing on the results of its investigation, and with copies of autopsy and forensic reports and crime scene photographs. Thus, it is no longer the case that there is no investigative body in Haiti which can pursue the Bertin murder.

Moreover, it must be understood that the FBI operated under disadvantages which would not apply to Haitian authorities. The FBI had absolutely no legal status in Haiti. As a result, the FBI did not have recourse to the Haitian courts or justice system to compel testimony or the production of documents or to guarantee protection to witnesses or define legally binding parameters for cooperation. Indeed, there was no legal obligation for persons to cooperate truthfully with the FBI, nor would most of the results of our investigation have any particular legal validity or significance in a Haitian court because the FBI is not recognized as an investigative body under Haitian law.

In sum, the investigation has progressed to the point at which the support of Haitian judicial process and the Haitian judicial system is necessary. For example, with respect to the interviews of IPSF and Palace Security personnel which proved so difficult to arrange satisfactorily, there seems little purpose in having the FBI, with its lack of legal status, return to pursue these interviews. The SIU, working with and under the direction of Haitian judicial personnel, can authoritatively resolve questions of compulsion, privilege, right to counsel, and conditions of the interviews; and they (or others appropriate under Haitian law) can take the interviews in a manner that they will acquire legal validity in future proceedings.

While it would therefore not be productive for the FBI to resume this investigation, the FBI does remain available to provide forensic or other technical assistance to the SIU in its investigation of the Bertin case.

(4) Please provide for the record a chronology on the FBI's investigation into the Bertin murder, including mention of any briefings of any U.S. government officials by the FBI on its inquiry. Specifically, when did the FBI first brief NSC and State Department officials in Washington, D.C., on the links between the Bertin killings and others? Who at the NSC and State was first provided this information?

Immediately upon its arrival in Haiti, the FBI investigative team established contact with personnel at the U.S. Embassy. Throughout the course of their investigation in Haiti, FBI personnel met regularly in Port-au-Prince with State Department officials assigned to the Embassy, U.S. military personnel, and officials of other U.S. agencies, in order to obtain assistance and advice and generally to apprise those personnel of the course of the investigation. Assistance and advice from other U.S. government personnel who were stationed in Haiti was particularly needed in this case because of language problems, lack of familiarity with Haitian law and culture, and lack of any established law enforcement contacts or reliable police counterparts in Haiti. Also, Embassy personnel were at times needed to assist the investigative team in overcoming problems and in dealing with the Haitian government.

Accordingly, the FBI met frequently with U.S. Embassy, military and other U.S. government personnel in Port-au-Prince. Among the matters discussed at these meetings were investigative strategies, problems experienced and possible solutions, and certain investigative information developed on the murders.

The following is a chronology listing contacts and events relating to the investigation since the FBI's arrival in Haiti on March 29, 1995. The chronology is not inclusive of all interviews, contacts and events that occurred during the course of the investigation. It reflects the general progress of the investigation, briefings or meetings with NSC personnel as well as certain contacts with U.S. Embassy or State Department personnel. It does not purport to reflect all the regular contacts and discussions described above between the FBI investigating team and other U.S. personnel stationed in Haiti.

#### Chronology:

- On March 28, 1995, Mirielle Durocher Bertin and Eugene Baillergeau are killed in downtown Port-au-Prince.
- On March 29, at 5:30 a.m., FBI agents arrive in Haiti.
   Initial efforts consisted of collecting and preserving forensic evidence at the crime scene and conducting preliminary interviews to identify potential witnesses and subjects.

- During the first week of the investigation, FBIHQ and DOJ
  officials attended a video conference at the DOJ Command
  Center regarding the status of the investigation and the
  investigative strategy. Representatives of the Department
  of State and NSC participated.
- On April 5, FBIHQ officials met with Ambassador Dobbins, Ambassador Gelbard and Richard Clarke of the NSC staff, again regarding the status of the investigation and the investigative strategy.
- On April 9, FBI officials from Headquarters and the Miami Division (from which the investigative team was primarily drawn), met with U.S. Embassy officials in Port-au-Prince. Embassy personnel were apprised of the status of the investigation and the FBI's strategy for the investigation. There was also a discussion of the interview of Government of Haiti officials.
- on or about April 10 and 11, FBI officials and U.S. Embassy representatives met with Prime Minister Smarck Michel and Justice Minister Exume to inform them of the FBI's investigative plan in the case. Thereafter, FBI agents met with IPSF personnel involved in investigating the Bertin/Baillergeau murders. At these early meetings, it was agreed the FBI and IPSF would conduct parallel investigations and exchange information. However, the FBI is not aware whether, or the extent to which, the IPSF actually conducted a separate investigation of the murders. No exchange of information with the IPSF was ever pursued.
- On or about April 20, FBI personnel attended a meeting at the U.S. Embassy at which Mr. Clarke (NSC) and Ambassador Gelbard were present. The status of the investigation was discussed.
- On or about May 24, an FBIHQ official and FBI Miami Division manager met with U.S. Embassy personnel and discussed problems the FBI was experiencing in the investigation. Thereafter, the FBI officials and U.S. Embassy personnel met with Government of Haiti officials.
- On or about May 30, FBI personnel from the investigative team met with U.S. Embassy officials and discussed the status of the investigation. The FBI personnel advised the U.S. Embassy officials of information that immediately following the FBI's having made contact with a potential witness or source of information, what appeared to be official Haitian government vehicles were observed in the area. This activity was perceived as a form of harassment and intimidation on the part of Haitian officials.

- On or about June 19, FBI personnel met with U.S. Embassy
  officials and discussed the status of the investigation and
  the FBI's desire to interview Interim Police Security Force
  (IPSF) officers and problems the FBI team was experiencing
  in pursuing those interviews.
  - On or about June 20, an official from FBIHQ spoke with Ambassador Robert Gelbard regarding problems being experienced by the FBI in Haiti. Among the problems discussed were the following: difficulties in conducting interviews of IPSF officers; the perception of FBI agents, witnesses and sources that they were being harassed and intimidated by GOH employees; and the Government of Haiti's failure to respond to a prior request for limited immunity for FBI agents in Haiti similar to the immunity afforded U.S. Embassy personnel.
  - On or about June 27, an official from FBIHQ and an executive manager from the FBI's Miami Division met with U.S. Embassy officials in Haiti and discussed the status of the investigation, including the FBI's need to interview IPSF officers and other Government of Haiti officials. After that meeting, the FBI officials and U.S. Embassy representatives met with Minister of Justice Exume and President Jean Bertrand Aristide.
- On or about June 30, 1995, FBI Director Louis J. Freeh had a telephone conversation with Deputy Secretary of State Strobe Talbott, concerning problems experienced by the FBI in conducting its investigation in Haiti and the possible termination of the investigation. The major concern was the FBI's inability to interview Interim Public Security Force officers and Government of Haiti officials, under the appropriate conditions.
- On or about July 3, officials from FBIHQ, the Department of Justice and the Department of State travelled to Haiti to meet with U.S. Embassy officials regarding problems being experienced by the FBI, and in particular, the FBI's inability to interview IPSF officers and other Government of Haiti employees and the lack of response by the Haitian government to the U.S. request that the FBI personnel in Haiti granted limited immunity. After a meeting at the Embassy, these officials met with President Aristide regarding these matters.
- During a meeting at the U.S. Embassy in early to mid-July, FBI agents discussed for the first time evidence which provided a definitive link between the Bertin murder and other assassinations in Haiti. (It was not until that time that the aspect of the investigation which produced this evidence was completed.)

801

- In the latter part of July, the FBI began to remove investigative personnel from Port-au-Prince, since it appeared that it would likely take some time to negotiate acceptable conditions for the interviews of GOH officials and employees. Efforts continued throughout July and August to reach an acceptable resolution with the attorneys representing the individuals to be interviewed. During this period, no additional progress was made in the investigation on the ground of Haiti. Ultimately, no agreement could be reached regarding conditions for the interviews.
- On or about September 27, an FBIHQ official attended a meeting in Port-au-Prince with Government of Haiti and U.S. Embassy officials regarding the concept of forming a special investigating unit to handle the Bertin case and other highprofile murders.
- On the afternoon of October 12, Assistant Director Perry and other FBIHQ personnel, along with Department of Justice officials, participated in a video conference at the Department of Justice Command Center, the purpose of which was to provide a briefing on the results of the investigation to representatives of the NSC and Department of State. I believe Mr. Clarke of the NSC and Ambassador Dobbins participated in this video conference.
- On or about October 13, all remaining FBI personnel and equipment were removed from Haiti.
- In late October, 1995, the FBI prepared responses to a HPSCI inquiry regarding the Bertin investigation. The written responses prepared by the FBI were circulated in an interagency process and provided to the Department of State, NSC, CIA and DIA on October 31, and the results of the investigation were discussed at an interagency meeting held at the Department of State on that date.
- On December 21, FBIHQ officials and Miami Division personnel met with U.S. Embassy officials and had a discussion regarding the FBI's providing a briefing regarding the investigation to the SIU. Thereafter, FBI personnel provided the briefing to SIU, with representatives from the U.S. Embassy present.
- Also on December 21, an FBIHQ official and a Miami Division executive manager accompanied by a U.S. Embassy official met with Minister of Justice Magloire regarding the briefing provided to the SIU.

The video teleconference briefing on October 12, described above, was the first briefing the FBI provided for State

Department and NSC officials in Washington, D.C. regarding the results of the investigation. During that briefing, the definitive links between the Bertin murder and other murders were discussed.

(5) Were you or any other official of the FBI aware of Ambassador James Dobbins' requests to the National Security Council for an FBI briefing on the Bertin inquiry (to which he alluded in his January 4 testimony)? If so, when did these requests occur? What was the decision on whether such briefings should take place? When such briefings were denied, who ultimately decided that such briefings should not take place, and what was the reasons for this decision? When such a briefing was arranged, who ultimately decided that such a briefing should take place?

Neither I, nor any other FBI official to my knowledge, is aware of a request by Ambassador Dobbins to the National Security Council for an FBI briefing which was subsequently denied (and to which he alluded in his January 4 testimony).

The decision to proceed with the briefing which took place by secure video teleconference on October 12th was made by Mr. Waxman.

(6) Were there threats or intimidation of your agents or potential witnesses by officials of the Haitian Government? Were any of these threats traced to officials of the Haitian Government?

Certain individuals employed by (or who appeared to be employed by) the Government of Haiti, including some personnel of the IPSF, were involved in activity that members of the FBI investigating team perceived as being intended to threaten and intimidate the FBI agents or potential witnesses, or to otherwise impede the progress of the FBI's investigation into the murders of Bertin and Baillergeau.

During the course of the investigation, sources and witnesses who had been contacted by the FBI advised that immediately following the departure of the investigating agents, automobiles appearing to be GOH official vehicles were observed in the area. The sources and witnesses told the FBI agents that they were concerned about the presence of these vehicles which they, as well as the FBI agents, perceived to be a form of intimidation. In addition, certain sources indicated they were concerned about their safety and were fearful of retaliation or retribution from the GOH because of their assistance or cooperation provided to the FBI. In at least two instances, sources reported what appeared to be specific warnings or threats about cooperating with the FBI.

In early June 1995, FBI agents began interviewing various IPSF personnel. On June 7, agents interviewed an IPSF officer at IPSF Headquarters. The interview with the IPSF officer was confrontational. During the interview, several of the officer's associates, most of them armed, gathered outside the interview room, making their presence nearby well known to the interviewing agents. The Agents perceived the conduct of those individuals as intended to intimidate them into terminating the interview. Most of the armed individuals were believed to be IPSF officers.

Although the individuals involved in the activity above were employed by the GOH, it is not known whether their activity was known to, officially endorsed by, or undertaken at the direction of, the GOH. In response to the activity, the FBI increased its level of security for FBI personnel, sources and witnesses.

(7) Was the FBI concerned that Haitian Government retained lawyers were "coaching" witnesses or suspects in the Bertin investigation? On what do you base this conclusion? Which lawyers, providing names where available, were involved in such behavior?

In one instance, the FBI team expressed concern to the U.S. military about an attorney's contacts with persons detained as suspects in an alleged conspiracy to kill Mrs. Bertin.

In early May, Burton V. Wides, an American attorney, informed the U.S. military that he had been commissioned by President Aristide to conduct an investigation of the Bertin/Baillergeau murders, and he requested access to the six individuals who had been arrested on March 19, 1995, for alleged involvement in a plot to murder Mrs. Bertin. The U.S. military agreed, on the condition that the FBI be present.

On May 11, Wides interviewed five of the six prisoners in the presence of an FBI agent. Each prisoner was interviewed separately. The man who had reported the plot and his wife responded to Wides' questions. The other three prisoners indicated they did not wish to answer any questions unless their attorney was present. Wides then asked each of the three prisoners to listen to his understanding of the facts and proceeded to describe to each prisoner a scenario that minimized or eliminated the three prisoners' culpability in the alleged conspiracy to murder Mirielle Bertin, and that corroborated the previous exculpatory statements of one of those prisoners.

We do not know what Mr. Wides' intent was in these dealings with the prisoners. However, after the interviews, the FBI expressed its concerns to both the U.S. Military and the Government of Haiti that this sort of access could impede the investigation and taint the testimony of the detainees.

(8) Has anyone at the State Department complained or expressed any concern to the Justice Department about briefings that you were providing to Members of Congress and their staffs? If so, what was the basis of their complaints? Are you aware of any effort by the State Department to encourage the FBI to keep its findings from the Congress?

At one point, the Department of State indicated to the Department of Justice that the Department of State had been unaware that some of the briefings had taken place, and asked that Justice let them know about any requests for such briefings, which the Department of Justice has since done. Otherwise, I am not aware of anyone from the Department of State who complained or expressed any concern to the Department of Justice about the briefings that I provided to members of Congress and their staffs.

I am not aware of any effort by the Department of State to encourage the FBI to keep its findings from Congress.

(9) Has the State Department reviewed, commented on, or changed the FBI's prepared testimony or any prepared Q&A that you offered at the January 4 hearing?

As part of the customary interagency clearance process for Congressional testimony by Administration witnesses, copies of draft prepared testimony of the FBI and Department of State witnesses at the hearing, as well as draft responses to the Committee's written questions were exchanged among the FBI, Department of Justice and Department of State for review and comment. Comments on the draft FBI testimony by the Department of State were considered, and where those comments served to clarify or correct a draft statement, those comments were reflected in the final prepared statement. Similarly, the FBI and Department of Justice had an opportunity to review and comment on the draft prepared statements of Ambassadors Gelbard and Dobbins.



## U.S. Department of Justice Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

#### FEB 1 2 1996

The Honorable Benjamin A. Gilman Chairman, House International Relations Committee United States House of Representatives Washington, D.C. 20515-4309

Dear Mr. Chairman:

Thank you for providing the Department of Justice with an opportunity to testify before the House International Relations Committee's January 4, 1996, hearing on Haiti human rights and police issues. The Department has reviewed the transcript from the hearing, has made corrections where necessary, and encloses this document with this transmittal. Seth Waxman's answers to the Committee's written questions are also enclosed. I hope these responses are both informative and helpful to the Committee's ongoing investigation.

During the hearing you asked Mr. Waxman for the "names of the attorneys who were involved at the time that you were making your -- having your discussions with Mr. Aristide". President Aristide was accompanied by three American attorneys when he met with Mr. Waxman, Mr. Perry and Ambassador Dobbins on July 3, 1995 -- Ira Kurzban, Burton Wides, and Laura Flynn. Following this meeting, when the FBI attempted to interview Haitian government employees, the FBI was contacted by other American attorneys who stated that they represented the employees the FBI wished to interview, not the Haitian Government. These attorneys were: Joseph Beeler, James McGuirk, Gregg Toung, and Paul Penichet.

In addition, at your request I enclose the Department's responses to questions propounded by the House Permanent Select Committee on Intelligence ("HPSCI"). As you are aware, without the approval of the HPSCI, the "third agency rule" prohibits our dissemination of the classified questions. We are, however, pleased to provide you with the answers in an effort to give you a more comprehensive view of the Department's efforts in Haiti. Please note that the answers are classified at the Secret level, and I ask that you ensure that all rules pertaining to the dissemination of classified materials are strictly adhered to. If you have any questions about these rules, please do not hesitate to contact me.

The Honorable Benjamin A. Gilman, Page 2

I hope the information provided aids the Committee in its oversight activities. If I can be of additional assistance, please contact me. Once again, thank you for these opportunities to discuss the Department's role in Haiti.

Sincerely,

Andrew A. Fois Assistant Attorney General

#### Enclosure

cc: The Honorable Lee H. Hamilton, Ranking Member, House International Relations Committee

To the best of your knowledge, when did the Department of Justice or FBI first brief NSC and State Department officials in Washington, D.C., on the links between the Bertin killings and others? Who at the NSC and State was first provided this information?

To the best of my knowledge the first such briefing in Washington occurred on October 12, 1995, via secure video teleconference. Deputy Assistant Director Perry and I and members of our respective staffs attended on behalf of the Justice Department. Ambassador Dobbins and Richard Clarke, chair of the NSC Executive Committee on Haiti, were briefed. Several further such exchanges occurred over the following weeks.

As I believe the Committee is aware, prior to this briefing reports had issued from U.S. agencies in Port-au-Prince other than the Justice Department or FBI, which referred to information indicating links between the Bertin murder and subsequent murders in Haiti. I understand some of that information had originally been developed by the FBI in its investigation of the Bertin murder. However, the reports from Port-au-Prince were not entirely accurate in their description of the information developed by the FBI.

2

Were you or any other official of the Justice Department aware of Ambassador James Dobbins' requests to the National Security Council for an FBI briefing on the Bertin inquiry (to which he alluded in his January 4 testimony)? Did the State Department make any such requests to the Justice Department or the FBI? If so, when did these requests to the NSC, Justice Department, or FBI occur? What was the decision on whether such briefings of State Department officials should take place? When such briefings were denied, who ultimately decided that such briefings should not take place, and what was the reason for this decision? When such a briefing should take place, and what was the reason for this decision? When such a briefing should take place, and what was the reason for this decision? When such a briefing should take place?

I do not recall any request by a member of the NSC staff, whether on behalf of Ambassador Dobbins or otherwise, for a briefing in Washington on the substance of the Bertin investigation prior to the request that generated the October briefing to which I referred above. I believe that request, first communicated by Ambassador Dobbins, was made a few days prior to the October 12th briefing.

During the active phase of the FBI's investigation, it was my view that the matter should be handled as an ongoing criminal investigation, and therefore that the substantive progress of the FBI's continuing investigation would not ordinarily be the subject of discussion in Washington interagency meetings. I have no specific recollection of making this point of view to either Mr. Clarke or Ambassador Dobbins, but I would not be surprised to learn that I did, since even I did not have substantial information on

what leads and information the FBI was developing. When the subject of the Bertin investigation came up in interagency meetings I attended, no substantive information was conveyed by me or any other Justice representative.

The decision to proceed with the October 12th briefing was mine. At that point the FBI had determined that its investigation had progressed as far as it could go under the circumstances and that the time had come to transfer the investigation to responsible Haitian authorities. FBI officials in Washington by that time were in a position to provide an overview to officials of the NSC and the State Department and to discuss how we should go about transferring responsibility for the investigation to Haitian authorities.

The Committee should be aware that for several weeks prior to the October 12th briefing, both Ambassador Dobbins and Mr. Clarke were aware that the FBI investigation had likely come to the end of its useful life and that the FBI was working to collect its information into a form that would be appropriate for transmission to the Haitian authorities. While I do not recall that either Ambassador Dobbins nor Mr. Clarke actually requested a Washington briefing before the October request discussed above, I understood that they desired one at such time as the FBI felt it was ready to turn the matter over, and I am informed that Michael Kozak of the DOS Haiti Working Group called DOJ personnel familiar with the investigation on more than one occasion to inquire informally about progress of the FBI's efforts to summarize its work product.

4

Provide for the record all correspondence between U.S. government officials and Haitian government officials (or their agents) regarding the FBI's Bertin inquiry.

The Department of Justice ("Justice") has searched its files and provides the correspondence at Attachment A. Please be advised that this response is only for those files within the possession of Justice. Moreover, Justice possesses copies of documents which originated from the State Department ("State"). State, however, requests that they provide the Committee with these documents and therefore, these documents are not included with this transmittal.

Under what circumstances, conditions, and/or parameters would the Justice Department support the return of the FBI to Haiti to complete its investigation into the Bertin killing?

I concur with Mr. Perry's views, as set out in his responses to the Committee's written questions, that at this point it would not be productive for the FBI to return to Haiti to resume the investigation.

Has the Justice Department formulated specific criteria and guidelines regarding the FBI's participation in investigations abroad in cases in which the FBI has no criminal or investigative jurisdiction (as was the case in the Bertin killing)? If so, what are they?

As Mr. Perry testified, the FBI has only rarely undertaken such investigations. It is the expectation of the Department of Justice that such investigations will in the future remain relatively unusual. Indeed, our current practice, which reflects the provisions of 28 U.S.C. § 533(3) and which contemplates a recommendation from the Department of State and approval by the Attorney General, will necessarily limit the number of such investigations and assure that those investigations are ones viewed as particularly important to U.S. interests.

In view of our practice and the rarity of requests for such investigations, the Department does not believe that formulation of formal criteria or guidelines governing the circumstances in which the Department might agree to become involved are necessary or useful. We intend to continue to carefully consider such requests on a case-by-case basis, taking into account all appropriate information available to us, including the reasons cited by the Department of State in recommending that the FBI undertake such an investigation.

In light of the FBI's experience in Haiti, the Department is considering whether it might be advisable to promulgate certain guidelines with respect to procedural issues that should be identified and resolved at the outset of any future involvement in these types of cases.

What are the Justice Department's practices, procedures, and requirements as to providing timely warning to private individuals who may be the target of specific death threats based upon any credible information that may come to the Department's attention during the course of an investigation or otherwise?

The Department does not have a formal, written policy on this point. Its practice is as follows:

When such information is received, the matter is referred to the investigative agency with primary responsibility for the investigation or prosecution to which the threat relates. In addition, depending on the identity of the target, the nature of the threat, security considerations, or other factors, other investigative agencies -- such as the Marshals Service or the Secret Service -- may be informed as well. In addition, state and local authorities will be advised in appropriate circumstances.

All such threat information must be dealt with promptly. If the target is or may be unaware of the threat, it is the policy of all Department of Justice agencies to inform him or her and to discuss appropriate precautions. In the rare circumstance in which the agency is giving consideration not to so warn a target, the matter must be discussed at the headquarters level. Where warranted, the Department arranges for threatened individuals to be relocated or protected.

Index of Correspondence<sup>1</sup>

DATE	DESCRIPTION
5/2/95	Mr. Wides to DAAG Richard
5/2/95	Mr. Wides to DAAG Richard
6/8/95	Mr. Wides to DAAG Richard
6/8/95	Mr. Wides to FBI Assistant Director Esposito
6/16/95	DAAG Richard to Mr. Wides
6/25/95	SA Giannotti to MOJ Exume
6/26/95	Mr. Wides to FBI Director Freeh
6/26/95	Mr. Wides to FBI Director Freeh
6/28/95	SA Giannotti to MOJ Exume
7/3/95	Jean Claude Nord to FBI
7/5/95	Mr. Wides to ADAG Waxman
7/10/95	Mr. McGuirk to SA Giannotti
7/13/95	FBI Chief Division Counsel Boldt to Mr. Nord
7/14/95	FBI Chief Division Counsel Boldt to Mr. McGuirk
7/24/95	Mr. McGuirk to SA Ciccarelli
7/26/95	ASAC Mallett to Mr. McGuirk
7/27/95	Mr. McGuirk to ASAC Mallett
7/27/95	Mr. McGuirk to Deputy Assistant Director Perry
7/27/95	Mr. McGuirk to FBI Director Freeh
8/16/95	ASAC Mallett to Mr. McGuirk
8/17/95	Mr. Wides to DIA
8/25/95	Mr. McGuirk to ASAC Mallett
8/28/95	Richard Clarke to Mr. Wides
9/1/95	Mr. McGuirk to ASAC Mallett
9/6/95	Mr. Beeler to ASAC Mallett
9/8/95	Mr. McGuirk to Deputy Assistant Director Perry
9/8/95	Mr. McGuirk to ADAG Waxman
10/6/95	Mr. Wides to ADAG Waxman

<sup>1</sup> Due to the third-party rule, this index does not include correspondence within the Department of Justice's possession between Government of Haiti officials and the State Department.

# Arent Fox

TO:

Mark Richard

FROM:

Burton V. Wides

DATE:

May 2, 1995

RE:

Haiti

Since you have me "under advisement", here's the quick and dirty schematic to assist you. By the way, apart from our glancing encounters over the years, and whatever else you may have heard, my "references" as to credibility would include Messers: Civiletti, Heyman, Keeney, Coffey and Toensing; Eric Richard, Ron Klain and Carl Stern; Di Genova, Rauh and Silbert; Sessions, Kreegar, Jim Nolan, Hoades and Mintz; Helms, Colby, Knoche, Turner and Inman (I may be the only person in town on reasonably good speaking terms with all five); and former Agency Inspectors General: Scott Breckenridge, John Waller and Don Briggs.

My Bureau interviewers' feedback (although I have not seen their exact 302's) will be essentially that my comments are "speculative with few leads"; "critical of the U.S. Government", and "in denial" about possible involvement of a "client". That is because: I threw a lot of unfamiliar background at them; I could not cite then and there every source for my assertions; and, in some cases I was simply raising a very educated guess about possibilities. In addition, however, while they were senior, experienced and competent Headquarters personnel, they may have been reluctant to pick up on a number of specific leads and areas of inquiry that would very much "open up the box" of the investigation as officially framed.

I will be out of pocket from 11:30 to 1:30, but free otherwise through the end of the day.

BVW/ice

### SUMMARY OF DOJ/NATIONAL SECURITY COMMUNITY ISSUE

- (1) On March 19, U.S. forces (technically MNF) arrested six persons in connection with an alleged plot to kill a number of opponents of the Aristide government, including Madame Durocher. On the 22nd/23rd, the U.S. Commander wrote the government of Haiti (GOH) about the plot, claiming that: it was disclosed by one Douge, who was working as a contract interpreter for the U.S. Special Forces ("SF"), when the SF went to his home because he hadn't reported for work. Allegedly, the plot was headed by GOH Interior Minister Beaubrun.
- (2) The GOH immediately warned Madame Durocher, who declined offers of official protection or safe passage and a visa.
- (3) About a week later, Madame Durocher, and her companion in an auto, were the victims of a professional hit. The previously arrested plotters were in jail at the time. Her companion was a legal client of hers and also an alleged partner of her husband in narcotics. A variety of facts and circumstances raise a number of possible motives/generic classes of suspects, including the drug world, personal relationships, and Right Wing politics. Drugs and politics also provide very plausible motives for an effort to frame Beaubrun and slander the Aristide administration.
- (4) The outcry following the killings included: (a) reports of death lists found on the initially arrested "plotters" or otherwise circulating in Haiti; (b) U.S. pressure on GOH to suspend Beaubrun; and (c) when the GOH refused, a rush of stories leaked by the Pentagon and the Embassy (according to the explicit media sourcing of the reports) that there was overwhelming evidence against Beaubrun, that the U.S. was worried about the other targets on the list, and that the U.S. was "skeptical" about Aristide's willingness to investigate or take action against his colleagues. At the same time, Haitians familiar with the players and the circumstances, ranging from one of Aristide's leading political opponents (but clearly prodemocracy and long time U.S.-planned front runner to succeed him as President) to representatives of some of the wealthlest families, branded the allegations against Beaubrun as "ridiculous".
- (5) President Clinton came to Haiti to thank the U.S. troops leaving and survey the "success" of his policy. At the U.S.' suggestion, the GOH invited the FBI in to help.
- (6) As I have told the Bureau directly, I have no doubt that the FBI in Haiti is pursuing a variety of leads and did not have a preordained theory of the case. Having reviewed literally hundreds of FBI investigation case files, I have the highest respect for their thoroughness, expertise and ability. But that's beside the point. The issue is that, in assessing possible motives and character of suspects of witnesses and those making allegations, and in generally assessing the dynamics of the situation, the Bureau is largely at the mercy of the national security community, i.e., CIA, NSA, DEA, State and DoD. Put bluntly, one issue is whether the Bureau was completely informed about all relevant information, or whether some of it was withheld because of potential embarrassment about U.S. involvement with particular

figures, or because their file undermines the credibility of the allegations against Beaubrun. Three examples include:

- What, in fact, was Douge's relationship with the USSF/Intelligence Community
  and what were the origins with his working with them regarding the inquiry
  about an alleged plot by Beaubrun?
- What are in <u>all</u> of the U.S. Intelligence Community files on the others arrested as part of the plot and, separately, what relationships has any element of the U.S. Government had with them?
- What all-source information -- particularly COMINT and HUMINT -- have the Intelligence Community and DEA searched for thoroughly, and provided to the Bureau, about the involvement of Madame Durocher, her husband and her client/companion, or Mr. Douge, in drug trafficking?
- (7) The U.S. now appears to be holding the original suspects in communicado, even from the GOH. The U.S. has not provided any substantive information on the results of its inquiry to the government of Haiti ostensibly, on the grounds of traditional Bureau concern about contamination of the inquiry by leaks of sensitive information (a concern which may have some merit). The result, however, is that the GOH and its inquiry are virtually shut out of the results of the FBI investigation. The GOH may not even receive a copy of the FBI's report. It appears that the U.S. is headed for a de facto special prosecutor situation in which all information is channeled to the judges of inquiry (in the Civil Code System), and the Executive Branch of the GOH is completely shut out. U.S. prosecutors and present or retired FBI officers will be available to "assist" the judges of inquiry.
- (8) Under these circumstances, the Bureau's report may indicate there is not enough evidence to go to trial on any individual named defendant; alternatively, the judges of inquiry may reach that conclusion, whatever is in the Bureau report. However, the FBI report presumably will be shared with the U.S. military, and Intelligence Community, and may find its way to the Hill -- all at a time when many persons within the Executive Branch and the Congress would be only too happy to find a basis to pull the plug on U.S. involvement and support of Haiti. Anything is possible, but Beaubrun's involvement in the hit seems far less likely, frankly, at this point, than some questionable involvement of U.S. Government personnel in the leaking, misuse and possibly even origination of these allegations against Beaubrun, and the probability that the Bureau did not receive all of the information in the Intelligence Community's files about the players in the case. (I would be happy to elaborate.)
- (9) The judge of inquiry may decline to indict and ask for a trial; or the Bureau report and subsequent trials may focus on persons other than Beaubrun and the allegations about, e.g., drug traffickers or Right Wing thugs. In either case, there would be no opportunity, outside of the FBI's traditionally tightly drawn investigative box, to determine whether there was any failure in the U.S. national security community to "come clean with the Bureau" on all relevant

information in its possession, including some which the Bureau, unaided might not know enough to have requested (the problem that <u>you</u> are preeminently familiar with). This might ("might", not "did") include:

- · information about persons on present or past U.S. payrolls; and
- information regarding advance knowledge about plots to frame Minister Beaubrun or advance information about the actual killing.
- (10) In order to avoid another Guatemala-type controversy that would spatter mud this time on the Bureau, the Department and the White House, these matters should be fully explored -- before the case is closed in a rush to judgment and in the understandable pace to present closure to Hill critics of U.S.-Haitian policy.

# Arent Fox

TO:

Mark M. Richard .

Deputy Assistant Attorney General for International Affairs

and Special Investigations

FROM:

Burton V. Wides

DATE:

May 2, 1995

RE:

Haiti

Since you have me "under advisement", here's the quick and dirty schematic to assist you. By the way, apart from our glancing encounters over the years, and whatever else you may have heard, my "references" as to credibility would include Messers: Civiletti, Heyman, Keeney, Coffey and Toensing; Eric Richard, Ron Klain and Carl Stern; Di Genova, Rauh and Silbert; Sessions, Kreegar, Jim Nolan, Hoades and Mintz; Helms, Colby, Knoche, Turner and Inman (I may be the only person in town on reasonably good speaking terms with all five); and former Agency Inspectors General: Scott Breckenridge, John Waller and Don Briggs.

My Bureau interviewers' feedback (although I have not seen their exact 302's) will be essentially that my comments are "speculative with few leads"; "critical of the U.S. Government", and "in denial" about possible involvement of a "client". That is because: I threw a lot of unfamiliar background at them; I could not cite, then and there, every source for my assertions; and, in some cases, I was simply raising a very educated guess about possibilities. In addition, however, while they obviously were senior, experienced and competent Headquarters personnel, they may have been reluctant to pick up on a number of specific leads and areas of inquiry that would very much "open up the box" of the investigation, as officially framed.

I will be out of pocket from 11:30 to 1:30, but free otherwise through the end of the day.

BVW/ice

#### SUMMARY OF DOJ/NATIONAL SECURITY COMMUNITY ISSUE

- (1) On March 19, U.S. forces (technically MNF) arrested six persons in connection with an alleged plot to kill a number of opponents of the Aristide government, including Madame Durocher. On the 22nd/23rd, the U.S. Commander wrote the government of Haiti (GOH) about the plot, claiming that: it was disclosed by one Douge, who was working as a contract interpreter for the U.S. Special Forces "SF"), when the SF went to his home because he hadn't reported for work. Allegedly, the plot was headed by GOH Interior Minister Beaubrun.
- (2) The GOH immediately warned Madame Durocher, who declined offers of official protection or safe passage and a visa.
- (3) About a week later, Madame Durocher, and her companion in an auto, were the victims of a professional hit. The previously arrested plotters were in jail at the time. Her companion was a legal client of hers and also an alleged partner of her husband in narcotics. A variety of facts and circumstances raise a number of possible motives/generic classes of suspects, including the drug world, personal relationships, and Right Wing politics. Drugs and politics also provide very plausible motives for an effort to frame Beaubrun and slander the Aristide administration.
- (4) The outery following the killings included: (a) reports of death lists found on the initially arrested "plotters" or otherwise circulating in Haiti; (b) U.S. pressure on GOH to suspend Beaubrun; and (c) when the GOH refused, a rush of stories leaked by the Pentagon and the Embassy (according to the explicit media sourcing of the reports): (a) that there was overwhelming evidence against Beaubrun; (b) that the U.S. was worried about the other targets on the list, and (c) that U.S. officials were "skeptical" about Aristide's willingness to investigate or take action against his colleagues.

At the same time, many Haitians familiar with the players and the circumstances branded the allegations against Beaubrun as "ridiculous". These ranged from one of Aristide's leading political opponents (but clearly pro-democracy and long time U.S.-planned front runner to succeed him as President) to representatives of some of the wealthlest families.

- (5) President Clinton came to Halti to thank the U.S. troops leaving and survey the "success" of his policy. At the U.S.' suggestion, the GOH invited the FBI in to help.
- (6) As I told the Bureau interviewers directly, I have no doubt that the FBI in Haiti is pursuing a variety of leads and did not have a preordained theory of the case. Having reviewed literally hundreds of FBI investigation case files, I have the highest respect for their thoroughness, expertise and ability. But that's beside the point. The issue is that, in assessing possible motives and character of suspects of witnesses and those making allegations, and in generally assessing the dynamics of the situation, the Bureau is largely in the hands of the national security community, i.e., CIA, NSA, DEA, State and DoD. Put bluntly, one issue is whether the Bureau was completely informed about all relevant information, or whether some of it was withheld because of potential embarrassment about U.S. involvement with particular

- 2 -

figures, or because their file undermines the credibility of the allegations against Beaubrun. Three examples include:

- What, in fact, was Douge's relationship with the USSF/Intelligence Community
  and what were the origins of his working with them regarding the inquiry about
  an alleged plot by Beaubrun?
- What are in all of the U.S. Intelligence Community files on the others arrested
  as part of the plot and, separately, what relationships has any element of the
  U.S. Government had with them?
- What all-source information -- particularly COMINT and HUMINT -- have the
  Intelligence Community and DEA searched for thoroughly, and provided to the
  Bureau, about the involvement of Madame Durocher, her husband and her
  client/companion, or Mr. Douge, in drug trafficking?
- (7) At one point, U.S. MP's appeared to be holding the original suspects incommunicado, even from the GOH. This has now changed, but GOH contact with its prisoners (they were initially turned over to the GOH by the MNP) in a case under the GOH's sovereign law enforcement jurisdiction, and on which the FBI is assisting the GOH, must be cleared with the U.S! The U.S. has not provided any substantive information on the results of its inquiry to the GOH, ostensibly, on the grounds of traditional Bureau concern about contamination of the inquiry by leaks of sensitive information (a concern which may have some merit). The end result, however, is that the GOH and its inquiry are virtually shut out of the product of the FBI investigation. It is not even clear that the GOH Executive Branch will receive a copy of the FBI's report. It appears that the U.S. is headed for a de facts ospecial prosecutor situation in which all information is channeled to the judges of inquiry (in the Civil Code System), and the Executive Branch of the GOH is completely shut out. U.S. prosecutors and present or retired FBI officers will be available to "assist" the judges of inquiry.
- (8) Under these circumstances, the Bureau's report may indicate there is not enough evidence to go to trial on any individually named defendant. Alternatively, the judges of inquiry may reach that conclusion, whatever is in the Bureau report. However, the FBI report presumably will be shared with the U.S. military, and Intelligence Community, and may find its way to the Hill all at a time when many persons within the Executive Branch and the Congress would be only too happy to find a basis to pull the plug on U.S. involvement and support of Haiti. Anything is possible, but frankly, Beaubrun's involvement in the hit seems far less likely at this point, than some questionable involvement of U.S. Government personnel in the leaking, misuse and possibly even origination of these allegations against Beaubrun, and the probability that the Bureau did not receive all of the information in the Intelligence Community's files about the players in the case. (I do not know if the Bureau's own Intelligence Division searched its files for "third agency" documents on some of the players and provided them to the FBI investigators in Haiti.)

- (9) The judge of inquiry may decline to indict and ask for a trial; or the Bureau report and subsequent trials may focus on persons other than Beaubrun, e.g., drug traffickers or Right Wing thugs. In either case, there would be no opportunity, outside of the FBI's traditional tightly drawn investigative box, to determine whether there was any failure in the U.S. national security community to "come clean with the Bureau" on all relevant information in its possession, including some which the Bureau, unaided, might not know enough about to have requested (the problem that you are preeminently familiar with). This might (N.B. "might", not "did") include:
  - · information about persons on present or past U.S. payrolls; and
  - information regarding advance knowledge about plots to frame Minister Beaubrun or advance information about the actual killing.
- (10) In order to avoid another Guatemala-type controversy that would spatter made this time on the Bureau, the Department and the White House, these matters should be fully explored before the case is closed, in a rush to judgment and at the understandable fast pace to present closure to Hill critics of U.S.-Haitian policy.

# MEMORANDUM

TO: Mark Richard

Deputy Assistant Attorney General

(International and Security)

THRU: Mylan Denerstein

FROM: Burton V. Wides

DATE: June 8, 1995

RE: Haiti FBI Investigation

This memorandum is to recapitulate for the record the information that I provided orally in my telephone conversation this morning with Ms. Mylan Denerstein.

(1) The FBI unit in Haiti appears to have shifted the focus of its investigation. If so, this might be purely the result of its own scrutiny of the alleged "evidence" -- eagerly proffered and publicized by officials of the Department of Defense and the U.S. Embassy in the immediate aftermath of the slayings -- that the Minister of the Interior masterminded an assassination conspiracy against Madame Durocher and others. It also might have been partly caused by the results of my independent investigation of that "evidence", which I provided to Mr. Gianotti and his associates. That is not important. The point is that they apparently have shifted their focus to a theory of the case involving, inter alia, one or more police officials and the deputy director of the Palace security office.

This current line of investigative effort raises two very serious issues: one procedural and one substantive.

- (2) The procedural issue arises because there was a clear understanding between the U.S. Embassy (specifically the DCM, Vicky Huddleston) and the Aristide government:
  - The FBI would not seek to interview Government of Haiti ("GOH") officers or
    officials without coordinating the interview with the Haitian police and Ministry
    of Justice and,
  - in any event, the FBI would not do so until they had resolved the issue of who
    else would be present at such interviews.

The Bureau is there at the invitation of the GOH and is supposedly providing assistance to that government. The GOH made clear that they wanted such interviews to be conducted jointly with

present if he wanted one (as would be insisted upon under Justice Department procedures for an investigation conducted in the U.S.).

In April, when this issue could not be resolved, I was personally informed by Ms. Huddleston, on behalf of the Bureau, that the Bureau would do its investigation without seeking such interviews until this matter could be resolved. Nevertheless, I was informed yesterday that the head of the Interim Police Security Force (IPSF), Danny Toussaint, had recently learned from several police officers that they had already been interviewed by the FBI, without any such coordination, without any representative of the GOH present, and without a private attorney even though at least one of them, reportedly, was directly accused by the FBI interviewers of having participated in the assassinations.

- (3) Let me make very clear for the record that, if the Bureau, using its outstanding investigative capabilities, has developed a "smoking gun", or very probative evidence (as distinct from the matter discussed in point 4 infra), that IPSF lieutenant Lubin was involved in the slayings, then as far as the GOH is concerned, the investigation should go forward vigorously and, if warranted, result in prosecution.
- (4) But I have some reason to question what seems to be the primary evidentiary basis for this line of pursuit. According to the IPSF, the Bureau investigators who covertly questioned a Lieutenant Lubin, not only accused him of complicity in the slaying of Madame Durocher and her companion in the vehicle, but also claimed that he acted in concert with one Joseph Medar, the deputy chief of the National Palace special security operations (roughly equivalent to the White House unit of the Secret Service Protection Division). Reportedly, the FBI interviewers further suggested that one very implicating circumstance was the very sharp increase in radio traffic on the day of the assassination between Lieutenant Lubin and Medar.

The Bureau apparently indicated, either to Lieutenant Lubin or subsequently to others in the GOH, that the U.S. also had deciphered the "code names" used by GOH officials on those intercepted channels. Finally, I understand that, in questioning Mr. Lubin, the FBI observed that those intercepted transmissions not only had become voluminous in the hours before the assassination, but also had suspiciously referred to tracking down a particular automobile moving around the city of Port-au-Prince.

(5) So far, so good. One of the points I have been stressing to Bureau officials and others in the U.S. Government is that, if the FBI investigation were to be taken seriously, it would have to include full access to a review of U.S. NSA, DEA, DOD and CIA communication intercepts for a month of two prior to the assassination, running the names of Madame Durocher, her husband, Mr. Bertin, her slain companion, Junior Baillergeau, and the major Haitian drug dealer, Huge "Ti" Paris (whose owned the car in which Baillergeau and Durocher were killed), through the computerized COMMINT "take" of those intercepts.

it is even possible that, unintentionally or otherwise, any specific reference to a license plate in the intercepted radio broadcasts concerning an automobile, were omitted from the information passed on to the Bureau. In that case, a major discrepancy between the license number on Chamblains' car, provided by the U.S. to Medar, on the one hand, and the license number on Baillergeau's car in which he and Madame Durocher were riding, on the other hand, would go unnoticed by the Bureau.<sup>27</sup>

#### **SUMMARY**

The bottom line is this:

- Mr. Gianotti should confer immediately with the Prime Minister's office or di-Minister of Justice regarding the attempted practice of interviewing Haitian officers and officials without a GOH presence, as well as respect for the subject's right to counsel.
- Appropriate Bureau officials in Washington should make sure that, to the extent suspicion of or accusation against Lieutenant Lubin and others is substantially based on the above-mentioned intercepts, that Mr. Gianotti and his colleagues are fully aware of the alternative explanation for a major volume increase in radio communication and for any reference to a targeted automobile, on the day of the assassination.

The other thrust of my earlier communication continues, namely, the importance for any serious investigation of:

- a broad review of U.S. COMINT intercepts;
- a review of FBI Intelligence Division and U.S. Intelligence Community files on the Moises, Claude Douge, Mr. and Mrs. Bertin and Mr. Baillergeau and Huge Ti Paris:
  - a full understanding of the relevant narcotics operation and Right-Wing rivalries
    that are essential background of this case, and

I leave aside the suggestions that might be made by some suspicious Haitians, namely, that a message from U.S. security to Medar about Chamblains might have been passed on with a known incorrect license plate number, i.e., the plate number for Baillergeau's ear, in order to purposely trigger radio broadcasts by Medar that seem to be targeting the car involved in the slaying — as part of a very sophisticated effort to set up Medar (and the Aristide government) for these accusations.

dealer, Huge "Ti" Paris (whose owned the car in which Baillergeau and Durocher were killed), through the computerized COMMINT "take" of those intercepts.

The problem here is that there is another explanation for the large volume of radio traffic between Mr. Medar's office and various officers of the intelligence division of the IPSF or Ministry of the Interior, who were traveling about the city, on the day of the assassination, and even for repeated references to tracking a particular automobile.

- (6) It happens that, sometime in the late morning of March 28, the day of the assassination, Mr. Medar, in his capacity as Palace deputy security chief, received a visit from two members of the U.S. security/intelligence forces then in Haiti. One, I believe, was with the Secret Service advance detail for President Clinton's impending visit. The other, I believe, was with a more permanent security/intelligence office in Port-au-Prince, but I'm nor sure which agency or unit. The visitors reported that U.S. intelligence had recently learned that a Mr. Chamblains, the deputy head of FRAPH under Emmanuel Toto Constant, had returned to Port-au-Prince. The visitors further indicated that the U.S. knew the particular make or model of the car, and possibly even a license plate, which information the U.S. representative proceeded to give to Mr. Medar. Finally, the visitors indicated that the U.S. regarded the return of Chamblains (thought to be more of a violent thug type than Constant, himself) to be a very serious security threat—presumably not only to President Aristide, but also potentially to President Clinton or members of his entourage who were about to arrive in Port-au-Prince a few days later.
- (7) In the presence of these U.S. visitors, Medar tried to alert Mr. Toussaint by phone but as unable to get through, so he contacted him on the radio to repeat the essence of the warning he had just been given by the U.S. representatives. At that point, Toussaint sent out radio alerts to key members of the IPSF to look for the car in question. Obviously, such an alert would also have precipitated a substantial step-up in subsequent communications traffic among Mr. Medar, IPSF Headquarters and GOH intelligence or security agents in the field. It should be equally clear that such communication could involve substantial references to hunting down a particular automobile.
- (8) Just to close the loop, the following scenario is not implausible. Assume the frustration of Bureau agents, operating in terra incognita and unable to find a strong trail to the actual killers; also assume the eagerness of some young Haitian translator for the DOD or, possibly a Creole-speaking American COMINT officer or non-commissioned soldier, listening for hours to reams of intercepts, and straining to hear anything relevant. The latter comes across a bunch of radio messages couched partly in some Creole code, but clearly referencing the location of an automobile. This is provided to Bureau agents who seize upon it, in good faith, as a significant lead and proceed to question those persons on the tape whose code names have been previously identified for them by U.S. intelligence analysts.

> the alternative explanation of the so-called "evidence" against Minister Beaubrun.

These all call for a more cooperative relationship by the Bureau with myself and other designated representatives of the government of Haiti.

Finally, there is also a pending question regarding the difficulties I encountered in obtaining the attendance of the Moise brothers' attorney at a planned interview session, which did not come off because of the attorney's sudden absence after agreeing to be there and which coincided with the FBI's last-minute decision not to monitor the interview. I would like to pursue that further with Bureau officials here or in Port-au-Prince.

Thank you for your attention to this matter.

BVW/ice



TO: William J. Esposito

Assistant Director, FBI

Criminal Investigative Division

Attn: Steve Wylie

William Hulon

FROM: Burton V. Wides Bur

DATE: June 8, 1995

RE: Haiti FBI Investigation

This memorandum is to recapitulate for the record the information that I provided orally in my telephone conversation this afternoon with Mr. William Hulon.

(1) The FBI unit in Haiti appears to have shifted the focus of its investigation. If so, this might be purely the result of its own scrutiny of the alleged "evidence" -- eagerly proffered and publicized by officials of the Department of Defense and the U.S. Embassy in the immediate aftermath of the slayings -- that the Minister of the Interior masterminded an assassination conspiracy against Madame Durocher and others. It also might have been partly caused by the results of my independent investigation of that "evidence", which I provided to Mr. Gianotti and his associates. That is not important. The point is that they apparently have shifted their focus to a theory of the case involving, inter alia, one or more police officials and the deputy director of the Palace security office.

This current line of investigative effort raises two very serious issues: one procedural and one substantive.

- (2) The procedural issue arises because there was a clear understanding between the U.S. Embassy (specifically the DCM, Vicky Huddleston) and the Aristide government:
  - The FBI would not seek to interview Government of Haiti ("GOH") officers or
    officials without coordinating the interview with the Haitian police and Ministry
    of Justice and,
  - in any event, the FBI would not do so until else would be present at such interviews.

The Bureau is there at the invitation of the GOH and is supposedly providing assistance to that government. The GOH made clear that they wanted such interviews to be conducted jointly with a representative of their investigative effort and, where appropriate or necessary, with a government supplied translator and the opportunity for the interviewee to have a defense attorney present if he wanted one (as would be insisted upon under Justice Department procedures for an investigation conducted in the U.S.).

In April, when this issue could not be resolved, I was personally informed by Ms. Huddleston, on behalf of the Bureau, that the Bureau would do its investigation without seeking such interviews until this matter could be resolved. Nevertheless, I was informed yesterday that the head of the Interim Police Security Force (IPSF), Danny Toussaint, had exeently learned from several police officers that they had already been interviewed by the FBI, without any such coordination, without any representative of the GOH present, and without a private attorney even though at least one of them, reportedly, was directly accused by the FBI interviewers of having participated in the assassinations.

(3) The Embassy now claims that this agreement only extended to GOH Cabinet or sub-cabinet positions. That is inaccurate. While those were the only interview subjects under request at the time, the general consensus of the GOH regarding coordinated interviews applied to other officials or officers, and this was made clear to Ms. Huddleston and Ambassador Swing, as well as to Bureau representatives in Port-au-Prince.

Similarly, current Embassy misapprehension is that IPSF Commander-in-Chief Toussaint had authorized the FBI to interview any officers in the IPSF, without further communication or coordination with his office, and without regard to whether GOH investigators of slayings would be present. In fact, Commander Toussaint gave no such authorization and was shocked to learn that Lieutenant Lubin and others had been interviewed without his knowledge or participation.

- (4) Let me make very clear for the record that, if the Bureau, using its outstanding investigative capabilities, has developed a "smoking gun", or very probative evidence (as distinct from the matter discussed in point 4 infra), that IPSF lieutenant Lubin or anyone else was involved in the slayings, then as far as the GOH is concerned, the investigation should go forward vigorously and, if warranted, result in prosecution.
- (5) But, on the substantive level, I have some reason to question what seems to be the primary evidentiary basis for this line of pursuit. According to the IPSF, the Bureau investigators who coverlly questioned a Lieutenant Lubin not only accused him of complicity in the slaying of Madame Durocher and her companion in the vehicle, but also claimed that he acted in concert with one Joseph Medar, the deputy chief of the National Palace special security operations (roughly equivalent to the White House unit of the Secret Service Protection Division).

Reportedly, the FBI interviewers further suggested that one very implicating circumstance was the very sharp increase in radio traffic on the day of the assassination between Lieutenant Lubin and Medar.

The Bureau apparently indicated, either to Lieutenant Lubin or subsequently to others in the GOH, that the U.S. also had deciphered the "code names" used by GOH officials on those intercepted channels. Finally, I understand that, in questioning Mr. Lubin, the FBI observed that those intercepted transmissions not only had become voluminous in the hours before the assassination, but also had suspiciously referred to tracking down a particular automobile moving around the city of Port-au-Prince.

(6) So far, so good. One of the points I have been stressing to Bureau officials and others in the U.S. Government is that, if the FBI investigation were to be taken seriously, it would have to include full access to a review of U.S. NSA, DEA, DOD and CIA communication intercepts for a month of two prior to the assassination, running the names of Madame Durocher, her husband, Mr. Bertin, her slain companion, Junior Baillergeau, and the major Haitian drug dealer, Huge "Ti" Paris (whose owned the car in which Baillergeau and Durocher were killed), through the computerized COMINT "take" of those intercepts.

The problem here is that there is another explanation for the large volume of radio traffic between Mr. Medar's office and various officers of the intelligence division of the IPSF or Ministry of the Interior, who were traveling about the city, on the day of the assassination, and even for repeated references to tracking a particular automobile.

- (7) It happens that, sometime in the late morning of March 28, the day of the assassination, Mr. Medar, in his capacity as Palace deputy security chief, received a visit from two members of the U.S. security/intelligence forces then in Haiti. One, I believe, was with the Secret Service advance detail for President Clinton's impending visit. The other, I believe, was with a more permanent security/intelligence office in Port-au-Prince, but I'm nor sure which agency or unit. The visitors reported that U.S. intelligence had recently learned that a Mr. Chamblains, the deputy head of FRAPH under Emmanuel Toto Constant, had returned to Port-au-Prince. The visitors further indicated that the U.S. knew the particular make or model of the car, and possibly even a license plate, which information the U.S. representative proceeded to give to Mr. Medar. Finally, the visitors indicated that the U.S. regarded the return of Chamblains (thought to be more of a violent thug type than Constant, himself) to be a very serious security threat -- presumably not only to President Aristide, but also potentially to President Clinton or members of his entourage who were about to arrive in Port-au-Prince a few days later.
- (8) In the presence of these U.S. visitors, Medar tried to alert Mr. Toussaint by phone but as unable to get through, so he contacted him on the radio to repeat the essence of the

warning he had just been given by the U.S. representatives. At that point, Toussaint sent out radio alerts to key members of the IPSF to look for the car in question. Obviously, such an alert would also have precipitated a substantial step-up in subsequent communications traffic among Mr. Medar, IPSF Headquarters and GOH intelligence or security agents in the field. It should be equally clear that such communication could involve substantial references to hunting down a particular automobile.

(9) Just to close the loop, the following scenario is not implausible. First, assume the frustration of Bureau agents, operating in terra incognita and unable to find a strong trail to the actual killers. Second, assume the eagerness of some young Haitian translator working for the U.S. DOD, or possibly a Creole-speaking American COMINT officer or non-commissioned soldier, listening for hours to reams of intercepts, and straining to hear anything relevant. The latter comes across a bunch of radio messages couched partly in some Creole code, but clearly referencing the location of an automobile. This is provided to Bureau agents who seize upon it, in good faith, as a significant lead and proceed to question those persons on the tape whose code names have been previously identified for them by U.S. intelligence analysts.

The questlon, of course, is whether the FBI agents have been made aware of the above-mentioned visit to Medar the same morning. The odds of that are very slim, indeed. Moreover, it is even possible that, unintentionally or otherwise, any specific reference to a license plate in the intercepted radio broadcasts concerning an automobile, were omitted from the information passed on to the Bureau. In that case, a major discrepancy between the license number on Chamblains' car, provided by the U.S. to Medar, on the one hand, and the license number on Baillergeau's car in which he and Madame Durocher were riding, on the other hand, would go unnoticed by the Bureau.

#### **SUMMARY**

The bottom line is this:

- Mr. Gianotti should confer immediately with the Prime Minister's office or the Minister of Justice regarding the attempted practice of interviewing Haitian officers and officials without a GOH presence, as well as respect for the subject's right to counsel.
- Appropriate Bureau officials in Washington should make sure that, to the extent suspicion of or accusation against Lieutenant Lubin and others is substantially based on the above-mentioned intercepts, that Mr. Gianotti and his colleagues are fully aware of the alternative explanation for a major volume increase in radio communication and for any reference to a targeted automobile, on the day of the assassination.

The other thrust of my earlier communication continues, namely, the importance for any <u>serious</u> investigation of:

- · a broad review of U.S. COMINT intercepts;
- a review of FBI Intelligence Division and U.S. Intelligence Community files on the Moises, Claude Douge, Mr. and Mrs. Bertin and Mr. Baillergeau and Huge "Ti" Paris;
- a full understanding of the relevant narcotics operation and Right-Wing rivalries that are essential background of this case, and
- the alternative explanation of the so-called "evidence" against Minister Beaubrun.

These all call for a more cooperative relationship by the Bureau with myself and other designated representatives of the government of Haiti."

BVW/ice

Those of us participating in the GOH's investigation of the same events have made clear from the outset our willingness and desire to coordinate efforts and to exchange information we uncover with the FBI agents working the case. We have provided them with extensive information on several occasions. On the other hand, my requests to interview several U.S. personnel (such as Special Forces Sergeant Ms. Rosario, to whom Douge initially confided revelation) have thus far been denied by the State Department. Yet those persons manifestly possess highly relevant information regarding the circumstances under which:

<sup>·</sup> Mr. Douge disclosed the alleged conspiracy to his U.S. Army handlers; and

Special Forces and other U.S. interrogators intensively sought to "obtain corroboration" of Douge's story from the other four arrestees at Camp Dragon a week before the FBI team arrived



U.S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General

Washington, D.C 20530

June 16, 1995

Mr. Burton V. Wides, Esq.
\*Arent Fox Kinter Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Dear Mr. Wides:

Thank you for writing me to express your concerns about the current Federal Bureau of Investigation's (FBI) inquiry into the murder of Madam Durocher Bertin in Haiti.

As you are aware, it is impossible for me to comment on the nature of the evidence collected or the course of the inquiry. However, I have forwarded a copy of your letter to the FBI for their consideration.

If you have any more information regarding the investigation, I encourage you to contact the FBI directly.

Thank you for writing.

Sincerely,

Mark M Richard

Deputy Assistant Attorney General



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to

Industrial Park, Haiti June 25 1995

Jean-Joseph Exume Minister of Justice Government of Haiti Avenue Charles Summer Port-au-Prince, Haiti

Dear Minister Exume:

Following is a list of individuals the Federal Bureau of Investigation (FBI) intends to interview in the immediate future as part of its ongoing investigation of the assassination of Mireille Durocher Bertin and Eugene Baillergeau, Jr., on 3/28/95.

A. From the IPSF:

Maj. Dany Doussaint.
Lt. Pierre chil Mibin
Lt. Youri Vatortue
Lt. Raynald Soint Pierre
Lt. Richard Fadet
Lt. Sonny Norlsaint
Lt. Mignard Jean-Dierre
Sgt. Fabien Mucieh

B. From the National Palace:

Maj. Joseph Medard
Cpt. Richard selomon
Col. Pierre therubin II
Lt. Col. Jean Marie Celestin

All appointments will be made by interviewing agents with Maj. James Jean-Baptiste for IPSF personnel and with Me. Francois Dormevil for those working at the palace, as previously agreed upon. Thank you for your cooperation in this matter.

Sincerely,

Richard J. Giannotti 1630 KIK, 74101 Supervisory Special Agent Federal Bureau of Investigation

APPROVED:

76. 1.3.1882 2000 10. 1.3.1882

F 0 2 1 10 10 1



Burton V. Wides Tel 202/857-6035 Fax 202/857-6395 June 26, 1995

The Honorable Louis H. Freeh Director Federal Bureau of Investigation J. Edgar Hoover Building Ninth Street & Pennsylvania Avenue Washington, D.C.

Dear Director Freeh:

I regret having to bother you at this time, but the Bureau officials handling this matter have indicated there is no point in further communications about it at their level. Therefore, given the importance and urgency of the issue, I had no alternative but to contact you directly.

'Our firm, and particularly myself, have acted as legal counsel for the Constitutional Government of Haiti ("GOH") on a variety of matters since 1992. In this capacity, I was asked by the GOH to assist the Ministry of Justice in the Government's investigation of the murders of Madam Duroucher Bertin and Juneau Baillergeau. Because the GOH had asked President Clinton for assistance in this investigation from the Bureau, I was instructed to conduct my work cooperatively with the Bureau. I hope you will agree that the record summarized below makes clear I have tried to do so to the fullest extent possible.

Nevertheless, Assistant Director Esposito told me on Friday afternoon in a telephone conversation that: (1) because of the GOH's desire to have me sit in on the Bureau's requested interview of Major Medar, Deputy Chief of the GOH Palace Security Guard, and (2) because of my other investigative efforts:

- I was "obstructing the FBI investigation";
- There was "no need for the FBI to continue its effort": and
- He was pulling the unit out of Haiti.

Mr. Esposito said that the Bureau did not know whom I represented in this matter. That is puzzling since the Bureau unit in Haiti is aware that I provided the MNF on May 19 with an official written statement of my role. It was requested by the U.S., as a condition of my interviewing several prisoners. A copy is enclosed

The Honorable Louis H. Freeh June 26, 1995 Page 2

That threat is my reason for contacting you on an urgent basis.

There are two very distinct issues involved here. Let me first address the question of the GOH's position that a member or a representative of the GOH should sit in on the interviews of GOH officials. On this point, I have merely been the messenger, not the source of the message. This position had been formulated by the GOH prior to my first involvement in this matter. I did sit in on an early meeting with U.S. Embassy officials, who were attempting to negotiate the issue with President Aristide's chief of staff in early April. At that time:

- I assured GOH officials that it was long-standing general Bureau
  policy either not to interview persons with third parties present, or,
  in some circumstances to do so only with their personal attorney
  present.
- I also sought to explore, in good faith, potential compromises under
  which the concerns of the Haitian government could be met, while
  the Bureau was able to maintain its policy of no other parties being
  present during the interview. I expressly discussed these with U.S.
  Embassy officials, as well as the GOH, but the suggestions did not
  prove satisfactory solutions to the problem.
- I did point out to Embassy officials, and subsequently Bureau officials, that the FBI has made exceptions to this general policy in various special circumstances.

The point is that this, too is an exceptional situation in which the Bureau has been asked to assist a separate sovereign country's investigation of a crime outside of its jurisdiction. It was understood by the GOH that the Bureau would be conducting the investigation to assist the GOH's inquiry. In part, this is because there are many facets of the case which involve background and circumstances of which the Bureau is unlikely to be aware, and which the GOH can provide, in order to ensure that the Bureau has the fullest possible understanding of the significance of information, leads or theories of the case that its investigation develops.

This issue has remained unresolved for some time. Last Friday, I was simply calling Mr. Esposito to pass on the request from the GOH, that I sit in on the interview of Major Medar. I have had great difficulty in contacting the Bureau through the U.S. military security phone system and I am going to be in Haiti only for the first three days of next week. Hence, I was trying to ensure that, if mutually satisfactory arrangements of some sort could be worked out, the Bureau would

The Honorable Louis H. Freeh June 26, 1995 Page 3

interview Major Medar as soon as possible. I would be more than happy to have the final decision on any such arrangements be worked out through direct discussions between the Embassy and the GOH.

As far as resolving differences between the Bureau and the GOH on this procedural matter, obviously the U.S. Government will determine its position, and that is not a matter for input from the GOH. However, I would like to make a very personal observation, speaking for myself and not as a representative of the GOH. I hope that the Bureau will consult with the Attorney General, the Secretary of State and the National Security Council before any precipitous termination of the mission in Haiti.<sup>24</sup>

The second issue is the broader question that Mr. Esposito raised, namely that my efforts to assist the GOH's investigation of these assassinations has somehow "obstructed" the FBI's role in that inquiry. That suggestion is both unfounded and unwarranted.

To the contrary, I have sought repeatedly to cooperate with the Bureau in whatever way possible, and to provide information I discovered to the Bureau, in a very timely manner. For example, during my first trip to Haiti on this matter, I tried repeatedly to provide Mr. Gianotti's unit with information I had developed. Being unsuccessful down there, I obtained an interview of myself by Messrs. Wylie and Hulon as soon as I returned, in order to relay this information. On a subsequent visits to Haiti, I again tried to share relevant information with Bureau agents there. I provided additional information that I had obtained to Mr. Gianotti and General Hill, the Deputy Commander of the MNF. 1 also have suggested a variety of specific intelligence file searches essential to a full investigation of the matter, including the HUMINT and COMINT files of various U.S. agencies.

Most recently, I sought to provide important contextual information about the basis for the accusations which Bureau agents had recently made to a Haitian police lieutenant whom they were interviewing, about himself and Major Medar.

I include the White House in this thought, even though I spent a considerable part of my fifteen years as a staff counsel in the Senate working to establish the FBI Director's independence from the White House and from political interference with its investigations from any source whatsoever. This included helping to draft the statute which provides tenure for the Director. In this case, where the Bureau's assistance is being provided to promote the national security and foreign policy objectives of the U.S., I would think that the implications of such an action deserve review at the highest levels of our government.

The Honorable Louis H. Freeh June 26, 1995 Page 4

I would be more than happy to discuss any of the issues raised in this letter with you, with a member of your immediate staff, with the General Counsel's office, or with Mr. Esposito. But I thought that the matter should initially be brought to your attention at this time.

Once again, on behalf of the Government and the people of Haiti, let me express sincere appreciation for the long hours of dogged investigation that I know the members of this unit have put in — in a situation foreign to them and under hardship living conditions — in order to assist this fledgling democracy of Haiti to continue to make its way through a gauntlet of difficulties and prevent a return to the long nightmare of violence, vengeance, and terror.

Thank you for your attention to this matter.

Respectfully yours,

Britan V. Wide

Burton V. Wides

BVW/ice Enclosure



Le Premier Ministre

PM/SM/sd/734

Port-au-Prince, May 19, 1995

### TO WHOM IT MAY CONCERN,

Mr. Burton Victor WIDES is officially assisting the Government of Haiti's investigation of the Durocher Bertin case.

He is authorized to interview any prisoner being held in jail by the US or the Government of Haiti in connection with this matter.

Smarck MICHEL

BURTON V. WIDES

WASHINGTON SQUARE 1050 CONNECTICUT AVENUE, N.W. WASHINGTON, D.C. 20036-5339

June 26, 1995

The Honorable Louis H. Freeh Director Federal Bureau of Investigation J. Edgar Hoover Building Ninth Street & Pennsylvania Avenue Washington, D.C.

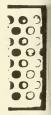
Dear Director Freeh:

I am writing this second letter in my personal capacity to amplify on my reaction to Mr. Esposito's accusation that I have been "obstructing" the FBI investigation. I wish to include personal references that would needlessly distract from the important questions of policy and international relations presented in my main letter.

I resent and find personally repugnant the suggestion that I would obstruct an FBI investigation of any kind: whether a background, criminal, or counterintelligence investigation or an investigation such as this, undertaken outside of the Bureau's law enforcement jurisdiction as an accommodation to the government of a friendly country. From the Watergate investigation to the post mortem counterintelligence inquiry in the matter of Nicholas Shadrin, to the investigation of Labor Secretary Donovan, to numerous investigations of federal judgeships, U.S. Attorney or U.S. Marshall nominees, I have worked assiduously to prevent obstruction of FBI investigations from any source -- whether the White House, the Congress, the Justice Department, other federal agencies, or outside persons.

Several Justices of the U.S. Supreme Court and Judges of the U.S. Courts of Appeals; former senior officials of the Bureau; former U.S. Attorneys General, and other senior officials of the Justice Department, including former heads of the Criminal Division; former Directors of Central Intelligence and U.S. Senators from both parties can assure you that I would never knowingly obstruct an FBI investigation.





So would others whom I believe know you personally, such as former Deputy Attorney General Phillip Heyman, former U.S. District Judge Herbert Stern and former Washington, D.C. U.S. Attorneys Earl Silbert and Joseph DiGenova.

What is particularly upsetting, is that I have repeatedly sought to cooperate with the FBI mission in Haiti and to provide whatever assistance I could, even on a totally unilateral basis, i.e., acknowledging the Bureau's apparent policy that no substantive information concerning the ongoing results of its investigation would be shared with members or representatives of the Haitian Government, in order to avoid "contamination" of the inquiry. I have repeatedly provided the information I have obtained to your representatives, both in Haiti and in Washington, on an ongoing basis. This has included giving numerous specific factual leads clearly relevant either to allegations or to what the U.S. Government considers "evidence" in the case (according to published reports and early communications from the MNF commander to the GOH). I have also provided historical and current context about persons, political dynamics and narcotics traffic in Haiti that would assist the Bureau to understand the implications of what they find or what they are told by other official and unofficial sources.

At the same time, I have repeatedly emphasized, orally and in writing, to both the GOH and senior U.S. Government officials, that I have the highest regard for the dedication, sophistication and expertise of Bureau investigating agents and case supervisors. I also acknowledged to Mr. Hulon and to members of Mr. Gianotti's unit that I knew they were doing the very best they could under difficult circumstances. In this peculiar situation, however, the Bureau is heavily dependent on other sources for background context and knowledge about the individuals who become the subject of investigation in this case. After all, this is not exactly like the Bureau's going in to investigate a mob murder or drug case in Newark or Buffalo, where they are intimately familiar with most of the relevant players and background dynamics.

In short, there is a legitimate concern that the investigating unit might be unaware of some important background, or might not come across information that has been provided to representatives of the GOH. If my direct and open efforts to help provide that context, and also to provide specific leads and information, is considered "obstructing the





investigation", then we are back in an Orwellian world of defensive "Bureauspeak," that I would have hoped we had long left behind.

Therefore, I would prefer to think that Mr. Esposito's comment was made in the heat of the moment because of his frustration with the Haitian Government's position with regard to interviews — a position I was merely trying to relay to him in a timely fashion. I also suspect that it may partly relate to an earlier memorandum which I sent him about Major Medar. In case you have not seen that memorandum, I am taking the liberty of enclosing a copy.

If there are other reasons why the U.S. Government would prefer to terminate the Bureau's involvement in this investigation, that is quite another matter. I hope they would be discussed as candidly as possible with the Government of Haiti, through some channel, instead of my efforts to provide potentially useful information to the Bureau, or the issue of interview participation, being used as a pretext for such a pullout - and for subsequent leaked stories that the GOH did not want to cooperate and (by implication) has something to hide.

Once again, speaking solely in my personal capacity, and not as a representative of the Government of Haiti, I would hate to see the Bureau be blind sided by persons with other agendas, or have the Bureau's stature and reputation for a political independence, developed under Directors Webster and Sessions, and yourself, become embroiled in a new round of any such inaccurate, and very harmful leaks or statements undermining the Constitutional Government of Haiti.

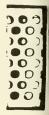
Sincerely,

Duston V. Wides

Buton V. Wills

BVW/ice Enclosures







U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to File No.

Industrial Park, Haiti June 28, 1995

Jean-Joseph Exume Minister of Justice Government of Haiti Avenue Charles Summer Port-Au-Prince, Harti

Dear Minister Exume:

Following is a list of individuals the Federal Bureau of Investigation (FBI) intends to interview in the immediate future as part of its ongoing investigation of the assassination of Mireille Durocher Bertin and Eugene Baillergeau, Jr., on 3/28/95.

A. From the IPSF:

Maj. Dany Toussaint/ Capt Mendes Lesly Petion Lt. Youri Latortue Lt. Mignard Jean-Pierre Lt. Ruguins Andre Sgt. Fabien Lucien Joel Jean (GTMO) Leslie Sainton (GTMO)

From the National Palace: B

> Maj. Joseph Medard Cpt. Richard Salomon Col. Pierre Cherubin II Lt. Col. Jean Marie Celestin

In addition to the interviews stated above, the following officers have agreed to take a polygraph examination as indicated below:

Lt. Pierre-Onil Lubin Lt. Richard Cadet Lt. Raynald St. Pierre

7/4/95 7/5/95 7/6/95

1000 HRS 1000 HRS

231000 HRS

The Polygraph examinations will be conducted as the Light Industrial Couplex (LIC).

JUL 13 1535

All appointments will be made by interviewing agents with Maj. James Jean-Baptiste for IPSF personnel and with Me. Francois Dormevil for those working at the palace. Thank you for your cooperation in this matter.

Sincerely,

Richard J. Giannotti Supervisory Special Agent Federal Bureau of Investigation

APPROVED:

#### Memorandum



Date 2/6/96

To : Seth Waxman

Associate Deputy Attorney General

Prom : William E. Perry

Deputy Assistant Director

Subject: HAITI

MAJOR CASE #118; FPC - HOMICIDE OO: MIAMI

INFORMATION MEMORANDUM

FBI files in the Miami Field Office and at FBIHQ were searched for all correspondence between U.S. government officials and Haitian government officials regarding captioned investigation. The searches were conducted pursuant to a request by DOJ personnel in order for the DOJ to respond to questions submitted to you by the House International Relations Committee (HIRC).

A letter addressed to Jean Claude Nord, a Haitian attorney who purported to represent members of the Interim Public Security Force (IPSF) of interest to the FBI was located and provided to DOJ personnel. The letter was dated 7/13/95, and signed by FBI Special Agent (SA) Edwin H. Boldt. SA Boldt made reference to receiving a letter from Mr. Nord dated 7/3/95. A search of Miami Field Office and FBIHQ files failed to locate Nord's letter dated 7/3/95. SA Boldt was contacted and he advised that he does not have a copy of Nord's letter. Efforts will continue in the Miami Field Office to locate Nord's letter, and if located, the letter will be immediately provided to your office for transmittal to the HIRC.

A review of the letter written by SA Boldt dated 7/13/95, and a conversation with SA Boldt regarding the contents of Nord's 7/3/95 letter indicates that Nord's letter was in regards to the conditions of interviewing his client and the use of the polygraph examination.



Burton V. Wides Tel 202/857-6035 Fax 202/857-6395

July 5, 1995

1.11.0

Seth P. Waxman, Esq. Associate Deputy Attorney General U.S. Department of Justice 10th Street and Constitution Avenue, N.W. Washington, D.C.

Dear Mr. Waxman:

Although I assume from your remarks tne other day that you have seen the enclosed, I am supplying separate copies to you just in case so you will have a bit more background.

Your oral advocacy and titration of diplomatic aplomb and not-so-veiled threats were very impressive.

I would like to meet with you as soon as I return, i.e., on Thursday morning, and have asked my secretary to try to schedule an appointment.

Sincerely yours,

Burton V Wides

Buton V. Wiles

BVW/ice Enclosures

Arent Fox Kintner Plotkin & Kahn • Washington, DC
New York, NY • Vienna, VA • Bethesda, MD • Budapest, Hungary • Jeddah. Kingdom of Saudi Arabia

# Arent Fox

TO: William J. Esposito

Assistant Director, FBI

Criminal Investigative Division

Attn:

Steve Wylie

William Hulon

FROM: Burton V. Wides

DATE: June 8, 1995

RE: Haiti FBI Investigation

This memorandum is to recapitulate for the record the information that I provided orally in my telephone conversation this afternoon with Mr. William Hulon.

(1) The FBl unit in Haiti appears to have shifted the focus of its investigation. If so, this might be purely the result of its own scrutiny of the alleged "evidence" -- eagerly proffered and publicized by officials of the Department of Defense and the U.S. Embassy in the immediate aftermath of the slayings -- that the Minister of the Interior masterminded an assassination conspiracy against Madame Durocher and others. It also might have been partly caused by the results of my independent investigation of that "evidence", which I provided to Mr. Gianotti and his associates. That is not important. The point is that they apparently have shifted their focus to a theory of the case involving, inter alia, one or more police officials and the deputy director of the Palace security office.

This current line of investigative effort raises two very serious issues: one procedural and one substantive.

- (2) The procedural issue arises because there was a clear understanding between the U.S. Embassy (specifically the DCM, Vicky Huddleston) and the Aristide government:
  - The FBI would not seek to interview Government of Haiti ("GOH") officers or
    officials without coordinating the interview with the Haitian police and Ministry
    of Justice and,
  - in any event, the FBI would not do so until they had resolved the issue of who else would be present at such interviews.

The Bureau is there at the invitation of the GOH and is supposedly providing assistance to that government. The GOH made clear that they wanted such interviews to be conducted jointly with a representative of their investigative effort and, where appropriate or necessary, with a government supplied translator and the opportunity for the interviewee to have a defense attorney present if he wanted one (as would be insisted upon under Justice Department procedures for an investigation conducted in the U.S.).

In April, when this issue could not be resolved, I was personally informed by Ms. Huddleston, on behalf of the Bureau, that the Bureau would do its investigation without seeking such interviews until this matter could be resolved. Nevertheless, I was informed yesterday that the head of the Interim Police Security Force (IPSF), Danny Toussaint, had recently learned from several police officers that they had already been interviewed by the FBI, without any such coordination, without any representative of the GOH present, and without a private attorney even though at least one of them, reportedly, was directly accused by the FBI interviewers of having participated in the assassinations.

(3) The Embassy now claims that this agreement only extended to GOH Cabinet or sub-cabinet positions. That is inaccurate. While those were the only interview subjects under request at the time, the general consensus of the GOH regarding coordinated interviews applied to other officials or officers, and this was made clear to Ms. Huddleston and Ambassador Swing, as well as to Bureau representatives in Port-au-Prince.

Similarly, current Embassy misapprehension is that IPSF Commander-in-Chief Toussaint had authorized the FBI to interview any officers in the IPSF, without further communication or coordination with his office, and without regard to whether GOH investigators of slayings would be present. In fact, Commander Toussaint gave no such authorization and was shocked to learn that Lieutenant Lubin and others had been interviewed without his knowledge or participation.

- (4) Let me make very clear for the record that, if the Bureau, using its outstanding investigative capabilities, has developed a "smoking gun", or very probative evidence (as distinct from the matter discussed in point 4 infra), that IPSF lieutenant Lubin or anyone else was involved in the slayings, then as far as the GOH is concerned, the investigation should go forward vigorously and, if warranted, result in prosecution.
- (5) But, on the substantive level, I have some reason to question what seems to be the primary evidentiary basis for this line of pursuit. According to the IPSF, the Bureau investigators who covertly questioned a Lieutenant Lubin not only accused him of complicity in the slaying of Madame Durocher and her companion in the vehicle, but also claimed that he acted in concert with one Joseph Medar, the deputy chief of the National Palace special security operations (roughly equivalent to the White House unit of the Secret Service Protection Division).

Reportedly, the FBI interviewers further suggested that one very implicating circumstance was the very sharp increase in radio traffic on the day of the assassination between Lieutenant Lubin and Medar.

The Bureau apparently indicated, either to Lieutenant Lubin or subsequently to others in the GOH, that the U.S. also had deciphered the "code names" used by GOH officials on those intercepted channels. Finally, I understand that, in questioning Mr. Lubin, the FBI observed that those intercepted transmissions not only had become voluminous in the hours before the assassination, but also had suspiciously referred to tracking down a particular automobile moving around the city of Port-au-Prince.

(6) So far, so good. One of the points I have been stressing to Bureau officials and others in the U.S. Government is that, if the FBI investigation were to be taken seriously, it would have to include full access to a review of U.S. NSA, DEA, DOD and CIA communication intercepts for a month of two prior to the assassination, running the names of Madame Durocher, her husband, Mr. Bertin, her slain companion, Junior Baillergeau, and the major Haitian drug dealer, Huge "Ti" Paris (whose owned the car in which Baillergeau and Durocher were killed), through the computerized COMINT "take" of those intercepts.

The problem here is that there is another explanation for the large volume of radio traffic between Mr. Medar's office and various officers of the intelligence division of the IPSF or Ministry of the Interior, who were traveling about the city, on the day of the assassination, and even for repeated references to tracking a particular automobile.

- (7) It happens that, sometime in the late morning of March 28, the day of the assassination, Mr. Medar, in his capacity as Palace deputy security chief, received a visit from two members of the U.S. security/intelligence forces then in Haiti. One, I believe, was with the Secret Service advance detail for President Clinton's impending visit. The other, I believe, was with a more permanent security/intelligence office in Port-au-Prince, but I'm nor sure which agency or unit. The visitors reported that U.S. intelligence had recently learned that a Mr. Chamblains, the deputy head of FRAPH under Emmanuel Toto Constant, had returned to Port-au-Prince. The visitors further indicated that the U.S. knew the particular make or model of the car, and possibly even a license plate, which information the U.S. representative proceeded to give to Mr. Medar. Finally, the visitors indicated that the U.S. regarded the return of Chamblains (thought to be more of a violent thug type than Constant, himself) to be a very serious security threat -- presumably not only to President Aristide, but also potentially to President Clinton or members of his entourage who were about to arrive in Port-au-Prince a few days later.
- (8) In the presence of these U.S. visitors, Medar tried to alert Mr. Toussaint by phone but was unable to get through, so he contacted him on the radio to repeat the essence of

the warning he had just been given by the U.S. representatives. At that point, Toussaint sent out radio alerts to key members of the IPSF to look for the car in question. Obviously, such an alert would also have precipitated a substantial step-up in subsequent communications traffic among Mr. Medar, IPSF Headquarters and GOH intelligence or security agents in the field. It should be equally clear that such communication could involve substantial references to hunting down a particular automobile.

(9) Just to close the loop, the following scenario is not implausible. First, assume the frustration of Bureau agents, operating in *terra incognita* and unable to find a strong trail to the actual killers. Second, assume the eagerness of some young Haitian translator working for the U.S. DOD, or possibly a Creole-speaking American COMINT officer or non-commissioned soldier, listening for hours to reams of intercepts, and straining to hear anything relevant. The latter comes across a bunch of radio messages couched partly in some Creole code, but clearly referencing the location of an automobile. This is provided to Bureau agents who seize upon it, in good faith, as a significant lead and proceed to question those persons on the tape whose code names have been previously identified for them by U.S. intelligence analysts.

The question, of course, is whether the FBI agents have been made aware of the above-mentioned visit to Medar the same morning. The odds of that are very slim, indeed. Moreover, it is even possible that, unintentionally or otherwise, any specific reference to a license plate in the intercepted radio broadcasts concerning an automobile, were omitted from the information passed on to the Bureau. In that case, a major discrepancy between the license number on Chamblains' car, provided by the U.S. to Medar, on the one hand, and the license number on Baillergeau's car in which he and Madame Durocher were riding, on the other hand, would go unnoticed by the Bureau.

#### **SUMMARY**

The bottom line is this:

- Mr. Gianotti should confer immediately with the Prime Minister's office or the Minister of Justice regarding the attempted practice of interviewing Haitian officers and officials without a GOH presence, as well as respect for the subject's right to counsel.
- Appropriate Bureau officials in Washington should make sure that, to the extent
  suspicion of or accusation against Lieutenant Lubin and others is substantially
  based on the above-mentioned intercepts, Mr. Gianotti and his colleagues are
  fully aware of the alternative explanation for a major volume increase in radio
  communication and for any reference to a targeted automobile, on the day of the
  assassination.

The other thrust of my earlier communication continues, namely, the importance for any <u>serious</u> investigation of:

- · a broad review of U.S. COMINT intercepts;
- a review of FBI Intelligence Division and U.S. Intelligence Community files on the Moises, Claude Douge, Mr. and Mrs. Bertin and Mr. Baillergeau and Huge "Ti" Paris;
- a full understanding of the relevant narcotics operation <u>and</u> Right-Wing rivalies that are essential background of this case, and
- the alternative explanation of the so-called "evidence" against Minister Beaubrun.

These all call for a more cooperative relationship by the Bureau with myself and other designated representatives of the government of Haiti."

BVW/ice

Those of us participating in the GOH's investigation of the same events have made clear from the outset our willingness and desire to coordinate efforts and to exchange information we uncover with the FBI agents working the case. We have provided them with extensive information on several occasions. On the other hand, my requests to interview several U.S. personnel (such as Special Forces Sergeant Ms. Rosario, to whom Douge initially confided revelation) have thus far been denied by the State Department. Yet those persons manifestly possess highly relevant information regarding the circumstances under which:

<sup>·</sup> Mr. Douge disclosed the alleged conspiracy to his U.S. Army handlers; and

Special Forces and other U.S. interrogators intensively sought to "obtain corroboration" of Douge's story from the other four arrestees at Camp Dragon a week before the FB1 team arrived.

BURTON V. WIDES

WASHINGTON SQUARE 1050 CONNECTICUT AVENUE, N.W. WASHINGTON, D.C. 20036-5339

June 26, 1995

The Honorable Louis H. Freeh Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Ninth Street & Pennsylvania Avenue
Washington, D.C.

Dear Director Freeh:

I am writing this second letter in my personal capacity to amplify on my reaction to Mr. Esposito's accusation that I have been "obstructing" the FBI investigation. I wish to include personal references that would needlessly distract from the important questions of policy and international relations presented in my main letter.

I resent and find personally repugnant the suggestion that I would obstruct an FBI investigation of any kind: whether a background, criminal, or counterintelligence investigation or an investigation such as this, undertaken outside of the Bureau's law enforcement jurisdiction as an accommodation to the government of a friendly country. From the Watergate investigation to the post mortem counterintelligence inquiry in the matter of Nicholas Shadrin, to the investigation of Labor Secretary Donovan, to numerous investigations of federal judgeships, U.S. Attorney or U.S. Marshall nominees, I have worked assiduously to prevent obstruction of FBI investigations from any source -- whether the White House, the Congress, the Justice Department, other federal agencies, or outside persons.

Several Justices of the U.S. Supreme Court and Judges of the U.S. Courts of Appeals; former senior officials of the Bureau; former U.S. Attorneys General, and other senior officials of the Justice Department, including former heads of the Criminal Division; former Directors of Central Intelligence and U.S. Senators from both parties can assure you that I would never knowingly obstruct an FBI investigation.

So would others whom I believe know you personally, such as former Deputy Attorney General Phillip Heyman, former U.S. District Judge Herbert Stern and former Washington, D.C. U.S. Attorneys Earl Silbert and Joseph DiGenova.

What is particularly upsetting, is that I have repeatedly sought to cooperate with the FBI mission in Haiti and to provide whatever assistance I could, even on a totally unilateral basis, i.e., acknowledging the Bureau's apparent policy that no substantive information concerning the ongoing results of its investigation would be shared with members or representatives of the Haitian Government, in order to avoid "contamination" of the inquiry. I have repeatedly provided the information I have obtained to your representatives, both in Haiti and in Washington, on an ongoing basis. This has included giving numerous specific factual leads clearly relevant either to allegations or to what the U.S. Government considers "evidence" in the case (according to published reports and early communications from the MNF commander to the GOH). I have also provided historical and current context about persons, political dynamics and narcotics traffic in Haiti that would assist the Bureau to understand the implications of what they find or what they are told by other official and unofficial sources.

At the same time, I have repeatedly emphasized, orally and in writing, to both the GOH and senior U.S. Government officials, that I have the highest regard for the dedication, sophistication and expertise of Bureau investigating agents and case supervisors. I also acknowledged to Mr. Hulon and to members of Mr. Gianotti's unit that I knew they were doing the very best they could under difficult circumstances. In this peculiar situation, however, the Bureau is heavily dependent on other sources for background context and knowledge about the individuals who become the subject of investigation in this case. After all, this is not exactly like the Bureau's going in to investigate a mob murder or drug case in Newark or Buffalo, where they are intimately familiar with most of the relevant players and background dynamics.

In short, there is a legitimate concern that the investigating unit might be unaware of some important background, or might not come across information that has been provided to representatives of the GOH. If my direct and open efforts to help provide that context, and also to provide specific leads and information, is considered "obstructing the

investigation", then we are back in an Orwellian world of defensive "Bureauspeak," that I would have hoped we had long left behind.

Therefore, I would prefer to think that Mr. Esposito's comment was made in the heat of the moment because of his frustration with the Haitian Government's position with regard to interviews -- a position I was merely trying to relay to him in a timely fashion. I also suspect that it may partly relate to an earlier memorandum which I sent him about Major Medar. In case you have not seen that memorandum, I am taking the liberty of enclosing a copy.

If there are other reasons why the U.S. Government would prefer to terminate the Bureau's involvement in this investigation, that is quite another matter. I hope they would be discussed as candidly as possible with the Government of Haiti, through some channel, instead of my efforts to provide potentially useful information to the Bureau, or the issue of interview participation, being used as a pretext for such a pullout - and for subsequent leaked stories that the GOH did not want to cooperate and (by implication) has something to hide.

Once again, speaking solely in my personal capacity, and not as a representative of the Government of Haiti, I would hate to see the Bureau be blind sided by persons with other agendas, or have the Bureau's stature and reputation for a political independence, developed under Directors Webster and Sessions, and yourself, become embroiled in a new round of any such inaccurate, and very harmful leaks or statements undermining the Constitutional Government of Haiti.

Sincerely, Button V. Wills

Burton V. Wides

BVW/ice Enclosures



Burton V. Wides Tel 202/857-6035 Fax 202/857-6395 June 26, 1995

The Honorable Louis H. Freeh Director Federal Bureau of Investigation J. Edgar Hoover Building Ninth Street & Pennsylvania Avenue Washington, D.C.

Dear L. ector Freeh:

I regret having to bother you at this time, but the Bureau officials handling this matter have indicated there is no point in further communications about it at their level. Therefore, given the importance and urgency of the issue, I had no alternative but to contact you directly.

Our firm, and particularly myself, have acted as legal counsel for the Constitutional Government of Haiti ("GOH") on a variety of matters since 1992. In this capacity, I was asked by the GOH to assist the Ministry of Justice in the Government's investigation of the murders of Madam Duroucher Bertin and Juneau Baillergeau. Because the GOH had asked President Clinton for assistance in this investigation from the Bureau, I was instructed to conduct my work cooperatively with the Bureau. I hope you will agree that the record summarized below makes clear I have tried to do so to the fullest extent possible.

Nevertheless, Assistant Director Esposito told me on Friday afternoon in a telephone conversation that: (1) because of the GOH's desire to have me sit in on the Bureau's requested interview of Major Medar, Deputy Chief of the GOH Palace Security Guard, and (2) because of my other investigative efforts:

- I was "obstructing the FBI investigation";
- · There was "no need for the FBI to continue its effort"; and
- · He was pulling the unit out of Haiti.

Mr. Esposito said that the Bureau did not know whom I represented in this matter. That is puzzling since the Bureau unit in Haiti is aware that I provided the MNF on May 19 with an official written statement of my role. It was requested by the U.S., as a condition of my interviewing several prisoners. A copy is enclosed.

That threat is my reason for contacting you on an urgent basis.

There are two very distinct issues involved here. Let me first address the question of the GOH's position that a member or a representative of the GOH should sit in on the interviews of GOH officials. On this point, I have merely been the messenger, not the source of the message. This position had been formulated by the GOH prior to my first involvement in this matter. I did sit in on an early meeting with U.S. Embassy officials, who were attempting to negotiate the issue with President Aristide's chief of staff in early April. At that time:

- I resured GOH officials that it was long-standing general Bureau
  policy either not to interview persons with third parties present, or,
  in some circumstances to do so only with their personal attorney
  present.
- I also sought to explore, in good faith, potential compromises under
  which the concerns of the Haitian government could be met, while
  the Bureau was able to maintain its policy of no other parties being
  present during the interview. I expressly discussed these with U.S.
  Embassy officials, as well as the GOH, but the suggestions did not
  prove satisfactory solutions to the problem.
- I did point out to Embassy officials, and subsequently Bureau officials, that the FBI has made exceptions to this general policy in various special circumstances.

The point is that this, too is an exceptional situation in which the Bureau has been asked to assist a separate sovereign country's investigation of a crime outside of its jurisdiction. It was understood by the GOH that the Bureau would be conducting the investigation to assist the GOH's inquiry. In part, this is because there are many facets of the case which involve background and circumstances of which the Bureau is unlikely to be aware, and which the GOH can provide, in order to ensure that the Bureau has the fullest possible understanding of the significance of information, leads or theories of the case that its investigation develops.

This issue has remained unresolved for some time. Last Friday, I was simply calling Mr. Esposito to pass on the request from the GOH, that I sit in on the interview of Major Medar. I have had great difficulty in contacting the Bureau through the U.S. military security phone system and I am going to be in Haiti only for the first three days of next week. Hence, I was trying to ensure that, if mutually satisfactory arrangements of some sort could be worked out, the Bureau would

interview Major Medar as soon as possible. I would be more than happy to have the final decision on any such arrangements be worked out through direct discussions between the Embassy and the GOH.

As far as resolving differences between the Bureau and the GOH on this procedural matter, obviously the U.S. Government will determine its position, and that is not a matter for input from the GOH. However, I would like to make a very personal observation, speaking for myself and not as a representative of the GOH. I hope that the Bureau will consult with the Attorney General, the Secretary of State and the National Security Council before any precipitous termination of the mission in Haiti.<sup>22</sup>

The second issue is the broader question that Mr. Esposito raised, namely that my efforts to assist the GOH's investigation of these assassinations has somehow "obstructed" the FBI's role in that inquiry. That suggestion is both unfounded and unwarranted.

. To the contrary, I have sought repeatedly to cooperate with the Bureau in whatever way possible, and to provide information I discovered to the Bureau, in a very timely manner. For example, during my first trip to Haiti on this matter, I tried repeatedly to provide Mr. Gianotti's unit with information I had developed. Being unsuccessful down there, I obtained an interview of myself by Messrs. Wylie and Hulon as soon as I returned, in order to relay this information. On a subsequent visits to Haiti, I again tried to share relevant information with Bureau agents there. I provided additional information that I had obtained to Mr. Gianotti and General Hill, the Deputy Commander of the MNF. I also have suggested a variety of specific intelligence file searches essential to a full investigation of the matter, including the HUMINT and COMINT files of various U.S. agencies.

Most recently, I sought to provide important contextual information about the basis for the accusations which Bureau agents had recently made to a Haitian police lieutenant whom they were interviewing, about himself and Major Medar.

<sup>1</sup> include the White House in this thought, even though I spent a considerable part of my fifteen years as a staff counsel in the Senate working to establish the FBI Director's independence from the White House and from political interference with its investigations from any source whatsoever. This included helping to draft the statute which provides tenure for the Director. In this case, where the Bureau's assistance is being provided to promote the national security and foreign policy objectives of the U.S., I would think that the implications of such an action deserve review at the highest levels of our government.

I would be more than happy to discuss any of the issues raised in this letter with you, with a member of your immediate staff, with the General Counsel's office, or with Mr. Esposito. But I thought that the matter should initially be brought to your attention at this time.

Once again, on behalf of the Government and the people of Haiti, let me express sincere appreciation for the long hours of dogged investigation that I know the members of this unit have put in — in a situation foreign to them and under hardship living conditions — in order to assist this fledgling democracy of Haiti to continue to make its way through a gauntlet of difficulties and prevent a return to the long nightmare of violence, vengeance, and terror.

Thank you for your attention to this matter.

Respectfully yours,

Bruten V. Wide

Burton V. Wides

BVW/ice Enclosure LAW OFFICES
JAMES MCGUIRK, P.A.
201 ALHAMBRA CIRCLE
SUITE 711
CORAL GABLES, FLORIDA 33134

TELEPHONE NUMBER (305) 445-8771 FACSIMILE (305) 445-9866

JAMES MCGUIRKOF COUNSEL GREGG T. TOUNGPAUL F. PENICHET

July 10, 1995

VIA FAX AND U.S. MAIL

CONFIDENTIAL

Richard J. Giannotti Supervisory Special Agent Federal Bureau of Investigation Industrial Park, Haiti

Dear Mr. Giannotti

I thought you would appreciate a letter from the American lawyer who has been talking with your Special Agents recently by telephone. Moreover, I thought you would like to know that my presence is not inconsistent with your investigative mission.

Together with Haitian counsel, I will be representing a number of witnesses who want the advise of a lawyer for their dealings with the Federal Bureau of Investigation. As I mentioned to one of your agents, I hope to meet with your agents this week in Port-au-Prince to coordinate scheduling.

I can be reached any time through my office here. My beeper in the U. S. is 1-800-507-3249.

Starting Wednesday, I can be reached in Port-au-Prince, Haiti at phone numbers 45-8550 or 45-8655. The fax is 45-0371.

You may recognize the Port-au-Prince telephone numbers as ones used by lawyers representing the government of Haiti. I am grateful that they have provided me this courtesy. But I have made it clear to them and to my clients — and now I would like to make it clear to you — that my loyalty is to my clients and that there can be no interference with my independence of professional judgement or with the client-lawyer relationship.

I aspire that -- when the investigation concludes -- my clients and the FBI will be pleased with my representation. Meanwhile, it is my responsibility to advise that no one should contact my clients directly. I promise to expedite any

communication you wish to have with any client.

The following individuals are represented by me and Haitian counsel.

- 1. S/Lt Pierre Onil Lubin
- 2. Lt. Guy Martial Pierre-Cadet
- 3. Maj. Medar Joseph
- 4. Lt. Youri LaLortue
- 5. Gen. Pierre H. Cherubin
- 6. Richard Salomon
- 7. Maj. Dany Toussaint
- 8. Capt. Mendes Lesly Petion
- 9. Sgt. Fabien Lucien
- 10. Joel Jean (GTMO)
- 11. Leslie Sainton (GTMO)
- 12. Lt. Jean-Pierre Mignard
- 13. Lt. Andre Ruguins
- I look forward to our meeting this week.

Your sincerely,

JAMES McGUIRK, P.A. /S/ James McGuirk

cc: Hem. Jean-Joseph Exume Burton V. Wides U.S. Department of Justice



Federal Bureau of Investigation

In Reply, Please Refer to

Camp Democracy Light Industrial Complex Fort-au-Prince, Haiti July 13, 1995

MR. Jean Claude Nord Attorney at Law Rue des Miracles, #156 Port-au-Prince, Haiti

Dear Mr. Nord:

I am in receipt of your letter to the Federal Bureau of Investigation, dated July 3, 1995, and while it does not formally call for a response, I believe such a response is necessary and appropriate in view of the claims and allegations contained therein.

As you know, on March 28, 1995, Mireille Durocher Bertin and Eugene Baillergeau, Jr. were viciously murdered in the streets of Port-au-Prince. As you should also know, on that same date, President Jean Bertrand Aristide sought assistance from the United States, and specifically the Federal Bureau of Investigation, in solving these crimes. In response to this request, FBI personnel traveled to Haiti on March 29, 1995, and have been guests in your country since that time. In spite of numerous impediments having been placed in our path, not the least of which is the intransigence of many of your fellow countrymen, progress is being made toward a solution to these murders.

As part of our investigative mission in Haiti, the FBI has been repeatedly counseled by the very highest level of Government of Haiti officials that the same investigative techniques employed by the FBI in an investigation in the United States should be employed in our Haiti investigation. While this mandate asks the FBI to be aggressive, the FBI in that has and will continue to conduct its inquiry in a manner designed ensure that the protections guaranteed under both Haitian and U.S. statutes and constitutions are observed and wheeling it

As to your assertions that your client Fierre Onil Lubin was at all times ready to collaborate with the FBI and the in total good faith assist the FBI in discovering the truth; no comment is necessary other than to state that the FBI is not relying on the claims of Lieutenant Lubin as to his level of

 $\bigvee$ 

land

cooperation, but on first-hand observations to his responses to FBI interviews.

It is your allegations pertaining to the FBI's use of the polygraph technique that demand a response. Firstly, no mention of a prohibition of the use of a polygraph test could be located in any United Nations declaration, resolution or statement of policy. Secondly, no condemnations of the polygraph technique by recognized human rights organizations were found. Your characterization of the polygraph as violent moral torture and as inhumane and degrading can only lead me to believe that perhaps you have been misled as to the technique and what it entails. Anyone so familiar would assure you that no physical discomfort whatsoever is occasioned by the polygraph technique, nor has it been described as causing psychological damage in the responsible literature. Your assertion that the technique has been condemned by eminent judges from numerous countries would seem to be contradicted by the common usage of polygraphs in countries throughout the world, including many where the record of protection of human rights far exceeds that of Haiti

The FBI has long been in the vanguard of professionalism in law enforcement, the hallmark of which is understanding of and adherence to statutory and constitutional protections. Be advised that the FBI not only would not use an investigative technique which would have the effects you attribute to the polygraph, but has long descried the use of such techniques by others.

Please do not hesitate to contact me if I may be of assistance to you, or if you have questions as to FBI procedure or technique.

Very truly yours,

EDWIN H. BOLDT Chief Division Counsel Port-au-Prince



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to File No.

Camp Democracy Light Industrial Complex Port-au-Prince, Haiti July 14, 1995

MR. James McGuirk, esq. Attorney at Law 201 Alhambra Circle, Suite 711 Coral Gables, Florida 33134 (BY FACSIMILE TRANSMISSION)

Dear Mr. McGuirk,

It was a pleasure meeting you and your associates in Port-au-Prince on Thursday, July 13, 1995, and I sincerely hope that our association will continue in such a spirit of cooperation.

The purpose of this letter is to confirm our telephonic conversation of Friday, July 14, 1995, wherein you were advised that the FBI could not approve your request to tape or otherwise mechanically record the proposed interviews of your clients in Hairi

The FBI has been requested by the chief of state of a foreign country to conduct an independent and confidential investigation to assist that country in solving two brutal murders, and the Bureau has responded to that request by endeavoring to conduct an inquiry utilizing the same investigative techniques which have proven successful in the United States and which have time and again passed judicial scrutiny.

Historically, the FBI has not tape- or mechanically recorded its interviews, nor allowed others to do so. Interviewing Agents make a record of an interview firstly by taking notes, and thereafter make a formal interview report, based upon those notes, on form FD-302. The interview notes are retained. This practice is accepted in every Federal judicial district in the United States, and because we are following U.S. investigative procedures, that practice will be adhered to in this instance. It would seem that with your presence; the presence of your French/Creole-speaking counsel, and yours interpreter, the accuracy of your combined notes and resultant internal report would be assured.

It is believed that the corcerns you voiced for the safety of those of your clients who choose to cooperate with the FBI are well-founded, in view of the documented incidents of violence in the Haitian culture. Adding a court reporter, who may not feel constrained by the bounds of the attorney-client or FBI-interviewee relationship, could unnecessarily magnify the potential danger. Parenthetically, please be advised that the FBI has plans in place to safeguard the well-being of anyone so in need.

As you know, in the United States, your request for copies of FD-302s would be responded to at the appropriate time pursuant to a discovery request, and you would thereby be enabled to question the accuracy of such a document in connection with its introduction into evidence. The FBI stands by its belief in the accuracy of FD-302s prepared by its Agents, while understanding at the same time that your responsibility as a defense attorney is to question the accuracy of any document relating to your client which may be introduced at trial. Your concerns, however, may be somewhat ameliorated by an understanding of the Haitian legal system, the end result of which is that no FD-302 or other FBI-generated document will ever be introduced in a Haitian court. While the FBI has been invited to Haiti to conduct a criminal investigation, the FBI and FBI documentation will play no direct part in the prosecution of any resultant criminal case.

In the Haitian system of jurisprudence, a Judge of Instruction is assigned to investigate criminal cases deemed by a Justice of the Peace to warrant such inquiry. The Judge of Instruction is not a judge at all, but is an investigator, in effect, a one-man grand jury. Even if a complete FBI investigative report were to be turned over to the appropriate Judge of Instruction, he, by statute, is not allowed to adopt it as his own and relate the FBI conclusion to the prosecutor, but in effect must "reinvent the wheel", must replicate the FBI investigative activity, must re-interview each witness and suspect, compile his own report, and reach his own conclusion, which he must then relate to the prosecutor. This recommendation must be based upon his interviews and resultant reports, and the FBI FD-302s and other documents are not admissible - or even reviewable - by the prosecutor, and furthermore, it is entirely possible that no foreigner, such as an FBI Agent, would even be allowed to testify in a Haitian criminal court. In view of the fact that judges of instruction are remarkably jealous of their positions, jurisdiction and authority, there is virtually no possibility anything other than the historical application of Haitian law and procedure would take effect in this case.

Perhaps the Judge of Instruction would permit you to tape or otherwise record his interviews of your clients; this measure would thus serve to satisfy your need as a defense

attorney to ensure the accuracy of  $\vartheta$  document to be used at trial - very possibly a key reason behind your request to record the FBI interviews.

Please do not hesitate to contact me at the numbers you have for me in Haiti, or at my Cincinnati number, (513) 421-4310, should you have any questions or comments concerning the FBI position regarding the recording of FBI interviews in Haiti, or any other issue of concern.

Sincerely,

EDWIN H. BOLDT Chief Division Counsel Port-au-Prince LAW OFFICES

#### JAMES McGuirk, P. A.

201 ALMAMBRA CIRCLE SUITE 711

CORAL GABLES, FLORIDA 33134

TELEPHONE (308) 445-8771 FACSIMILE (306) 445-8866

JAMES MCGUIPK

PAUL F. PENICHTY

July 24, 1995

#### CONFIDENTIAL

Joseph I. Ciccarelli Supervisory Special Agent Federal Bureau of Investigation Industrial Park, Haiti

Dear Mr. Ciccarelli:'

This is a follow-up on my letter to Special Agent Richard Gionnotti dated July 10, 1995. Please add to the list of clients Lt. Colonel Jean Marie Celestin and Lt. Reynald Saint-Pierre.

Yours sincerely,

110

cc: Jean-Joseph Exume' Burton V. Wides

U.S. Department of Justice



Federal Bureau of Investigation

In Reply, Please Refer to

16320 N.W. 2nd Avenue Miami, Florida 33169 July 26, 1995

#### Hand Delivered

Mr. James McGuirk, Esq. Attorney at Law 201 Alhambra Circle, #511 Coral Gables, Florida 33134

Re: Bertin/Baillergeau Assassination Investigation

Dear Mr. McGuirk:

The Federal Bureau of Investigation (FBI) hereby requests a statement of your position regarding the requested interviews of the Haitian Interim Public Security Force (IPSF) officers and other Haitian government officials which you presently represent in connection with referenced investigation.

The FBI has previously communicated to your office a number of requests to interview specifically identified IFSF officers and Haitian government officials. We have also advised that certain of the conditions which you have attempted to impose upon such interviews are in contravention of FBI policy and procedures and therefore, have the effect of precluding the interviews.

To reiterate, it is the position of the FBI that a Haitian language interpreter of your choice may be present during the course of the interviews. The FBI will also have an interpreter present during the interviews. Further, conditions requested concerning the tape recording, and/or verbatim transcription of the interviews and submission of interview questions to counsel in advance of the interviews are inconsistent with established FBI policy and procedures and can not be agreed to.

On July 25, 1995, you were advised that we required, by July 26, 1995, a definitive statement as to whether or not you would make your clients available for interviews conforming with FBI policy and procedures. To date we have received no response.

The FBI continues to expend significant resources in furtherance of the Bertin/Baillergeau investigation. We have an obligation to bring this matter to a logical conclusion as expeditiously as possible. Your continued failure to advise the FBI of the position of your clients regarding the requested interviews serves as an impediment to the resolution of this investigation. Therefore, it is hereby requested that you provide a verbal response to this effice, by 5:00 P.M., on Thursday, July 27, 1995. If no response is received on or before the date and time indicated, the FBI will conclude that your clients are unavailable for interview and will proceed accordingly.

Sincerely yours,

PAUL E. MALLETT

Associate Special Agent in Charge

## JAMES MCGUIRK, P. A.

BOI ALMAMBRA CIRCLE

CORAL GABLES, PLORIDA GOIG4

TELEPHONE (306) 445-8771 FACSIMILE (305) 445-0865

JAMES MEGUIRE GREDO T. TOUNG PAUL F. PENICHET

July 27, 1995

Paul E. Mallett Associate Special Agent in Charge Federal Bureau of Investigation 16320 NW 2nd Avenue Miami, PL 33169

Re: Haiti investigation

Dear Associate Special Agent in Charge Mallett:

In response to your letter of July 26, 1995, please be advised:

In order to expedite the interviews, I have talked or met with Supervisory Special Agent Richard Giannotti, Chief Division Counsel Edwin H. Boldt, Supervisory Special Agent Joseph I. Ciccarelli and Special Agent Mark D'Amico. I have kept these agents continually informed. have shuttled between Miami and Port-au-Prince each of the last three weeks, debriefed virtually all of my clients and believe there is no reason for these interviews not to go forward if the Federal Bureau of Investigation genuinely wants them to go forward.

Apparently because you have not been part of any of these discussions, your letter incorrectly suggests that there is a "condition" that written questions be submitted in advance. There is no such "condition." As an attorney, I have simply attempted to clarify what the Bureau proposes to do, reach agreement on logistics and then convey the Bureau's proposal to each of my clients for his consideration.

There appears to be only one significant matter of general concern to the clients: the FBI's apparent insistence that there be no impartial record of the interviews.

Thus far, the majority of my clients seem inclined to want a court reporter or other method of maintaining an impartial record of the interview. As to the rest of the clients, some are undecided, one has been unavailable because he was out of the country, and the other was unavailable because he missed his follow-up interviews with me.

Mr. Mallet July 27, 1995 Page ray

have advised the clients that I consider it prudent that there be a verbatim record of what they say. I would give the same advice to any client, particularly a public official, offering to give a voluntary interview in the United States. I have also advised the clients that, contrary to the representations in your letter, the Bureau does on occasion permit a verbatim transcript to be made of its interviews. This, of course, has caused the clients to wonder why the Bureau will not afford police officials of a foreign country the same courtesy.

littofar as your 5 p.m. Thursday, July 27, 1995 ultimatum is concerned, I can only advise you that I had advised Supervisory Special Agent Giannotti that I was doing my level best to try to act their responses to you.

understand that the Bureau was requested by the President to assis, the Haitian government as a matter of international cooperation. It is disquieting to now be confronted with an ultimatum that suggests a lack of respect and concern for the dignity of employees of the government you are supposed to assist.

We have concluded that the best response is to make our request directly to Deputy Assistant Director William E. Perry and are doing so.

Yours sincerely,

JAMES MCGUIRK, P

arnes McGuir

### JAMES MCGUIRK, P. A.

201 ALHAMBRA CIRCLE SUITE 711

CORAL GABLES. FLORIDA 33134

TELEPHONE (305) 445-6771 FACSIMILE (305) 445-9866

JAMES MCGUIRK

OF COUNSEL

July 27, 1995

William E. Perry Deputy Assistant Director Federal Bureau of Investigation 10th and Pennsylvania Avenues, N.W. Washington, D.C. 20535

Haiti investigation

Dear Mr. Perry:

We are writing to urge reconsideration of the Federal Bureau of Investigation decision that no court reporter be present at the interviews of the Haitian government employees who are our clients. We understand you are thoroughly familiar with this matter and are an appropriate Bureau official with authority to review the decision.

As you know, the Haitian government decided that counsel should be available to its employees. A team of two U.S. attorneys, Joseph Beeler and I, advised by Haitian counsel, has undertaken this representation. We have subdivided the work, and I have now met individually with all 15 individuals named in the June 28, 1995 letter from Supervisory Special Agent Richard Giannotti to Minister of Justice Jean-Joseph Exume. Each has accepted the offer of representation.

We have encouraged proceeding with the interviews, among other reasons, as a means of giving the Bureau insight into and understanding of these particular clients. We are confident your agents will learn, as we have in these past weeks, that they are courageous men committed to a new Haiti. These men previously served under an entirely different kind of regime; they mustered the lonely, personal courage to stand against it; some had to flee into exile under threat of death from their own superiors. The more your agents learn about them, the better for both countries.

We are now ready to go forward with the interviews. On July 13, 1995, we had a good meeting in Port-au-Prince with Chief Division Counsel Edwin H. Boldt, Supervisory Special Agent Joseph I. Ciccarelli and Special Agent Mark D'Amico about the interview logistics.

Mr. Perry July 27, 1995 Page two

The only significant matter not worked out involved whether to keep an impartial record of the interviews. On July 14, 1995, Chief Division Counsel Boldt wrote a letter advising that the Bureau opposed using a court reporter, apparently for security reasons.

In subsequent conversations with agents Boldt, Giannotti and Ciccarelli, I said we have no objection to the Bureau selecting the court reporter from any U.S. firm cleared for federal grand jury work. Indeed, my clients have the most professional and personal interest in maintaining the confidentiality of anyone involved in the investigation.

Nonetheless the Bureau insists that the clients agree to be interviewed by FBI agents who will later prepare non-verbatim summaries (FBI 302's) of what they believe are the relevant statements by the clients, which will then be incorporated in an investigative report to the governments of the United States and Haiti, without any client ever seeing the agents' summary of what he said. Presumably the first the clients will learn of what the agents wrote about them is when it is published.

We have been advised this was decided at the highest levels and, recently, that there is no appeal. This is an appeal to reason. Mr. Beeler is supporting it with a detailed memorandum submitted for your review.

The clients have asked why the Bureau does not want an impartial record kept of the interviews? We have received no good answer.

The clients have excellent reasons to request a record:

- 1. They are genuinely concerned about miscommunication with the agents. The Bureau's agents are conducting a purely local criminal investigation in a foreign country, involving a foreign culture, with the use of translators. Given these circumstances, I have advised my clients that not keeping a verbatim record of the interviews is a perilous way to do business. My clients have been quick to advise me that they never take statements in their investigations without submitting them to the interviewees for review and signature.
- 2. They need an independent, unassailable record to defend themselves against false reports of what was said. These reports could come from anywhere, most probably from some elements of the Haitian press, which as the Bureau very well knows from its own experience in Haiti, can be wildly inaccurate, politicized and scurrilous. In that unhappy event, the clients would have a verbatim transcript to respond with the truth.

We urge you to consider modifying the Bureau's policy for this unique case for a separate reason: it would/go far to allay fear.



Mr. Perry July 27, 1995 Page three

My clients are now very apprehensive. They initially welcomed the Bureau's assistance. What apparently happened next is a textbook case of international misunderstanding: as the Bureau commenced interviewing government employees, the Haitian Minister of Justice requested notification of who was being interviewed. The Bureau responded with its June 28 letter, which was then received by the persons listed as a singularly inappropriate way of enlisting their cooperation. It is fair to say that nobody intended such a result.

Granted that there are obvious problems that both sides must consider with care, I personally consider it a privilege to have some small part in forging a genuine professional link between the Bureau and police struggling to bring just and effective law enforcement to Haiti. It will benefit both governments, and most of all, the people of Haiti.

Yours sincerely,

JAMES McGUIRK, P.A.

James McGu

cc: Ambassador James Dobbins
Ambassador William Lacy Swing
Associate Deputy Attorney General Seth Waxman
Director Louis J. Freeh
Chief Division Counsel Edwin H. Boldt
Supervisory Special Agent Joseph I. Ciccarelli
Supervisory Special Agent Richard J. Giannotti
Hme. Jean-Joseph Exume
Joseph Beeler
Jean Baptiste Pierre-Cadet
Ira J. Kurzban
Burton V. Wides

### **MEMORANDUM**

TO: William E. Perry

Deputy Assistant Director

Federal Bureau of Investigation

FROM: Joseph Beeler

RE: Bertin/Baillergeau murder investigation in Haiti

DATE: July 27, 1995

We are writing you on behalf of clients—ritizens of Haiti-who would like to help the Federal Bureau of Investigation solve
the brutal murders it is investigating there. Speaking generally,
as we must, these clients are serving there as professional law
enforcement officials. They opposed the tyranny that tormented
Haiti until recently. They have lived through terrifying times.

These clients commend the willingness of the United States to assist a fledgling democracy, and they appreciate the sacrifices of the individual FBI agents who are experiencing the hardships of working in Haiti. Moreover, they would like to see bridges built between the law enforcement establishment of our country and the one Haiti is trying to create.

Our clients are more than puzzled, however, by the FBI's refusal thus far to accede to the making of an impartial record of the interviews they are willing to grant. This letter is an attempt by their counsel to persuade the Bureau to reconsider its position. We question the necessity for reliance upon the one-sided and unscientific FBI Form FD-302 (Report of Interview)

July 27, 1995 Page 2

To: William E. Perry Re: Haiti investigation

technique for making the record of what is said in the interviews. In this case, that technique is a recipe for trouble.

What do we propose? We urge simply that the FBI have a stenographer record each interview session verbatim by shorthand or mechanical means. Failing that, we suggest tape recording the interview sessions. The witness must naturally be given prompt opportunity to review the record memorializing what he said, just as he would be if he gave a deposition in the United States. We, as counsel, will then put this copy of the record in a bank vault.

Why do we want to ensure a substantially verbatim account of the interviews? The record needs to be complete and accurate for a number of very good reasons:

- This is a case fraught with cultural hurdles and language barriers. It would be easy for agents and witnesses alike to trip into miscommunication.
  - 2. The FBI is searching for the truth.
- 3. Moreover, an accurate record, such as that made by a certified court reporter, protects the FBI from any erroneous charges that its agents misunderstood a statement, mischaracterized what was being said or misbehaved.
- 4. Such an unimpeachable record also protects the witness when the FBI's final report is made public, if the report—or news media stories about the report—do not do justice to the interview. Often the best cure for misguided public opinion is the verbatim truth.

To: William E. Perry July 27, 1995
Re: Haiti investigation Page 3

5. Such an unimpeachable record also protects the witness if the content of an interview is ever leaked and the witness is portrayed in a false light.

- 6. In the event charges are eventually brought against any Haitian citizen, the citizen will enjoy the right to examine prior statements made by the witness. Our clients are law enforcement officials who believe in civil rights and, therefore, want the accused always to have a fair trial, free from dispute about the accuracy of prior statements.
- 7. Any record short of a substantially verbatim account recorded contemporaneously with the occurrence of the interview is prone to human error; invites unnecessary controversy; augurs the waste of time trying to reconstruct that which should have been recorded exactly in the first place; and inevitably clouds the integrity of the FBI's work.
- 8. Notwithstanding suggestions to the contrary, the FBI has from time to time afforded these safeguards to other witnesses. We do not want second-class treatment of our clients.

One would expect the Bureau to appreciate and accommodate witnesses who are willing to respond to questions and aid its investigation. In fact, one would anticipate an extra measure of accommodation when the Bureau is abroad and seeks to interview officers of a foreign sovereign.

July 27, 1995 Page 4

We understand the FBI's mission in Haiti is to assist the U.S. Department of State in its effort to help the Government of Haiti. Ambassador William Lacy Swing is involved in the discussions. Chief Division Counsel Edwin H. Boldt informed us that he has consulted periodically with Assistant United States Attorney John Haub, who is assigned to the U.S. Embassy. Indeed, we assume that assisting the State Department is part of the jurisdictional basis for the Bureau's presence and activities in Haiti. See 28 U.S.C. § 533(3).

In matters of foreign policy, one would, more than ever, expect the Bureau to be diplomatic. Particularly in matters involving the Republic of Haiti, the Bureau should be multilingual, culturally and racially sensitive, attuned to the expectations of witnesses, and respectful of local practices.

As in many jurisdictions throughout the free world, when Haitian police interview witnesses they show the resulting statement to the witness and ask him to sign it. For that matter, if the Government of Haiti were seeking judicial assistance from the United States to investigate in the United States to solve Haitian crimes, under American law the witnesses could require subpoenas and demand full deposition procedure. 28 U.S.C. § 1782; U.S. Attorneys Manual 9-13.540.

Why is the FBI refusing, thus far, to go along with a procedure that is designed to create a true and correct record; a procedure it sometimes allows witnesses in the United States to

July 27, 1995 Page 5

enjoy; a procedure that is acceptable in the foreign jurisdiction where it is operating? If the Bureau's stance is motivated by concerns about security, we can talk.

An FBI spokesperson, Edwin H. Boldt, sent a letter to my colleague James McGuirk, dated July 14, 1995. There the Bureau¹ mentions "documented incidents of violence in the Haitian culture" and observes that "[a]dding a court reporter, who may not feel constrained by the bounds of the attorney-client or FBI-interviewee relationship, could unnecessarily magnify the potential danger." (7/14/95 at 2) The short answer is for the Bureau to pick a court reporter who is, constrained by professional obligations and whose personal integrity is known to the Bureau.

In the United States, official court reporters are trusted every day to keep secret the contents of side bar conferences, in camera hearings, and grand jury proceedings. As you know, it works very well. Why not select a good court reporter who has qualified to serve under the standards formulated by the Judicial Conference of the United States, who has been sworn faithfully to perform the duties of an official court reporter, and who has been cleared for

<sup>&#</sup>x27;Mr. Boldt signed this letter "Chief Division Counsel Port-au-Prince." The business card he handed us at a meeting the day before described him as "Principal Legal Advisor/Media Representative" based at a Cincinnati, Ohio, FBI field office. We will abbreviate references to his letter by the date "(7/14/95)" followed by the page or pages being cited.

reporting federal grand jury proceedings? See 28 U.S.C. §§ 753(a) and (g); Fed. R. Crim. P. 6(e)(2).

In the United States, the FBI uniform crime reports document ample incidents of violence in the American culture as well. But there is no documented problem of court reporters leaking grand jury secrets.

In the United States, court reporters fly to depositions all over the country. Miami is a short hop from Port-au-Prince. If the integrity of the court reporter is the problem, then the Bureau can solve it easily by choosing a stenographer who has proven trustworthy.

How can the FBI oppose the creation of a proper record? We only advocate a procedure that is tried and true. The United States Congress has legislated that transcripts certified by an official court reporter "shall be deemed prima facie a correct statement of the testimony taken and proceedings had." 28 U.S.C. § 753(b).

Surely you must recognize, an FBI 302 is no substitute for a transcript. In the United States, federal prosecutors argue almost every day that 302's are not reliable accounts of FBI interviews. These American prosecutors insist that the Reports of Interview are not sufficiently accurate and complete to serve as a fair foundation for cross-examining a witness. They invoke the Jencks Act, urge that the 302 does not contain "a substantially verbatim recital of an oral statement made by the witness," Fed. R. Crim. P.

July 27, 1995 Page 7

26.2(f)(2); 18 U.S.C. § 3500(e)(2), and oppose even turning over a copy of the report to the other side. See generally James C. Cissell, Federal Criminal Trials §§ 809-10, at pp. 200-02 (3d. ed. 1992 & 1994 Cum. Supp.).

Moreover, in the United States the courts generally agree that FBI 302's are fallible. See, e.q., Palermo v. United States, 360 U.S. 343, 352-53 (1959) ("[S]ummaries of an oral statement which evidence substantial selection of material, or which were prepared after the interview without the aid of complete notes, and hence rest on the memory of the agent, are not to be produced. Neither, of course, are statements which contain the agent's interpretations or impressions"); United States v. Allen, 798 F.2d 985, 994 (7th Cir. 1986) (prohibiting defense access to FBI reports and stating that Jencks material "was intended by Congress to describe material that could reliably and fairly be used to impeach the testimony of a witness")(citing Goldberg v. United States, 425 U.S. 94, 112 (1976) (Stevens, J., concurring)); United States v. Morris, 957 F.2d 1391, 1401-02 (7th Cir.), cert. denied, 113 S. Ct. 380, 121 L. Ed. 2d 290 (1992); United States v. Claiborne, 765 F.2d 784, 801-02 (9th Cir. 1985), cert. denied, 475 U.S. 1120 (1986). It is a rare case in which a judge rules that a 302 qualifies as a reliable prior "statement" of a witness.

In short, transcripts are presumed to be correct. 302's are not.

July 27, 1995 Page 8

Indeed, there has been a great deal of litigation over the years whether FBI agents have fully and accurately reported everything that was said during an interview. Why encourage such disputes?

The Bureau's July 14 letter stated that its practice for making internal records "is accepted in every Federal judicial district in the United States..." (7/14/95 at 1) This observation of course means only that the Judiciary has not violated separation of powers and ordered your Executive Branch agency to reform its present FBI 302 investigation technique. The Judiciary most certainly has not pronounced FBI 302's to be uniformly complete and correct, nor to be acceptable as evidence. Nor have the federal courts prohibited the Bureau from doing better.

It should be obvious for the reasons outlined at the start of this letter, we all need a complete and accurate record to be made of the proposed interviews. That is the best way to head off controversy.

Equally obvious, the record should not be released until the investigation is complete and some necessity requires it. Making a record and publicizing it invoke far different considerations.

Professional law enforcement officers recognize that reports ordinarily should not be disseminated publicly while an investigation is pending. Sometimes they encourage witnesses not to tell anyone else what they have reported. But, in the United States, that is the witness' choice. Fed. R. Crim. P. 6(e)(2) (no

obligation of secrecy may be imposed upon a federal grand jury witness); see Butterworth v. Smith, 494 U.S. 624 (1990). We believe that is the rule in free Haiti too.

You should rest assured that our clients have no intention of broadcasting what they may report in the course of giving an interview. Not orally nor by publishing a transcript. But they must be protected from leaks, lies, character assassination, and from political assassination by the foes of democracy.

There are many dangers. Our clients realize the difficulty of protecting them against leaks. When the investigation concludes, the FBI will be presenting an official report to others over whom it has no control.

Inaccuracy may be the greatest danger: Outright fabrication—whispers, gossip and lies made up without leaks; selective leaking; quoting out of context; paraphrasing; and other common distortions of that which was truly said. These are the products of Man's imperfection. The best shield against plain old human error as well as malice and venality is a perfect record of what was said.

Court reporters are about as perfect as you can get. Tapes can be doctored. Fred E. Inbau & John E. Reid, <u>Criminal Interrogations and Confessions</u> 121 (1962) ("Another point to consider is the fact that since sound-recorded confessions are subject to undetectable tampering, they do not constitute the kind of unassailable evidence that is sometimes attributed to them.").

July 27, 1995 Page 10

Court reporters have proven to be dependable recorders of all kinds of proceedings.

We espouse a full and fair record of the interviews. That requires a substantially verbatim account made by a neutral person, ideally a certified court reporter. The burden should not fall on the Bureau to create an official record. Nor should anyone expect such a record to be accepted, especially if it consists only of FBI 302's.

The burden should not fall on the witness and his counsel to produce a record. No one would ever accept it as official or reliable; certainly the Bureau would not.

Naturally each side should take whatever notes it wants, and prepare whatever reports it desires. But the creation of two, possibly conflicting accounts is no answer. The creation of two consistent accounts is no answer either, if both overlook some detail or phrasing that turns out later to be important. Neither side needs to enter the fray. Neither side alone can resolve it.

The Bureau suggested in its letter that by virtue of the presence of American counsel, our French/Creole speaking Haitian counsel, and our interpreter, "the accuracy of [our] combined notes and resultant internal report could be assured." (7/14/95 1) This suggestion actually misses the point.

Neither the Bureau nor the rest of the world is willing to sign off on the accuracy of our internal reports. We must be protected by an unimpeachable recorder of the proceedings. We do

not qualify; the Bureau does not qualify; a certified court reporter picked by the Bureau and accepted by us does.

We remain perplexed by the Bureau's unwillingness to accept information from witnesses who want only a few basic safeguards to memorialize the truth. Perhaps the Bureau forgets the importance of avoiding unnecessary controversy. We need only point out the Bureau's own recent problems with communications to underscore the value of good records to document discussions. See David Johnston, Early Questions Reported on Top F.B.I. Aide: Conflicting words from the F.B.I. and Justice Department, The New York Times, July 19, 1995, at 10A.

Further, the Bureau should recall the importance of instilling trust in its procedures and confidence in its conclusions. The experts on interrogation know that oral, unwritten and unrecorded statements are not well received by a skeptical public. Fred E. Inbau & John E. Reid, Criminal Interrogations and Confessions 121 (1962). Among other things, a full and accurate record made by a neutral recorder of events avoids charges that admissions have been fabricated, a loathsome police practice known as "verballing." Gisli H. Gudjonsson, The Psychology of Interrogations, Confessions and Testimony 22, 51 (1992). The FBI may never stoop to such practices; but how can it dispel suspicion when it eschews verbatim accounts?

Consider the circumstances too. This is Haiti. The FBI should be taken as ambassadors rather than invading military policemen.

Consider the gravity of the occasion. The witnesses interviewed and the persons who may be named in the interviews (or in public reports or leaks) have a vital interest in accuracy. Reputations may be destroyed. See generally United States v. Briggs, 514 F.2d 794 (5th Cir. 1975). Lives may be imperilled.

Frankly, the Bureau seems to be staking out a rather peculiar position. The FBI 302 practice is not universally followed by other law enforcement agencies, despite the Bureau's leadership in training.

We know that other federal agencies do not recoil at the idea of tape recording statements. We believe that most state and local police forces like tape recorders and signed statements. See Inbau & Reid, supra, at 121-22, 129-30 (stressing the importance of getting statements in a written document signed by the person being questioned). Police interviews in England and Wales are taperecorded, with no undue interference resulting to the interrogation process. Gudjonsson, supra, at 39, 330.

Perhaps the Bureau is even a little confused about what the agency actually does. What is the real FBI practice? The letter declared that "[h]istorically, the FBI has not tape— or mechanically recorded its interviews, nor allowed others to do so." (7/14/95 at 1) We fear that this mistakes preference for practice.

In history there are instances in which the FBI has conducted interviews that were stenographically recorded. We challenge the Bureau to prove otherwise.

To be precise, we are reliably informed that, in history and practice, the FBI rarely permits an exact record to be made of interviews by its agents, but that there are exceptions. For example, the FBI has agreed to do so when the witness makes accurate recording a condition for granting any interview. Further, the FBI has required exact recording when the witness is a person making charges against the Bureau.

In fact, we can cite a court opinion documenting an instance of tape recording by an FBI agent. <u>United States v. Pacheco</u>, 489 F.2d 554, 565 (5th Cir. 1974) ("Two or three of the interviews ... were so lengthy and comprehensive that the interviewer, to ensure completeness and accuracy, recorded the conversation on tape and later made notes from the original recordings.") Further, we can cite another opinion demonstrating an instance in which an FBI stenographer took notes of witness interviews and transcribed them. <u>United States v. Lonardo</u>, 350 F.2d 523, 525 (6th Cir. 1965). So history supports our appeal for equal treatment.

The next question has to be, what does the Bureau really allow. What is the genuine FBI policy? The letter advised that the FBI "could not approve" our request for properly recorded interviews. (7/14/95 at 1) We took this to be a polite substitute for "will not approve." But yesterday my colleague, James McGuirk,

July 27, 1995 Page 14

received a hand-delivered letter from Associate Special Agent in Charge Paul E. Mallett declaring that verbatim transcription and tape recording of interviews are both in contravention of established FBI policies and procedures. This must be mistaken.<sup>2</sup>

We would certainly like to know of any rule or regulation that forbids the use of court reporters or tape recorders to make sure that an interview is accurate. We would like to see any provision of the FBI Manual of Instructions that precludes gathering evidence in this fashion. We would like to read any release in an FBI Law Enforcement Bulletin that truly prohibits the agency from employing these techniques.

If the agency is genuinely prevented from stenographic or sound recording of interviews, please cite us chapter and verse. If the agency ever has discretion to do so, please say so, and explain how this discretion is exercised.

<sup>&</sup>lt;sup>2</sup>This July 26, 1995, letter also assumed that our requests are "conditions" for the granting of an interview. This is an error. Each client has to be informed accurately about FBI policy and procedure before he can decide what conditions, if any, to attach.

The letter also stated as fact that we have made the submission of interview questions to counsel in advance of the interviews a further condition of the interviews. This is another error. The idea of previewing questions was mentioned so casually, if at all, during the July 13, 1995, meeting in Port-au-Prince that Chief Division Counsel Boldt did not even note it in his July 14, 1995, letter.

These mistakes in the July 26, 1995, letter illustrate the hazards of oral communication, and dramatize the necessity for a careful record of conversations.

July 27, 1995 Page 15

In any event, the Bureau needs to look carefully at the circumstances and to put them in proper perspective. Our clients want to help. They are willing to forego their rights to remain silent, rights guaranteed under Article 46 of the Constitution of the Republic of Haiti and by international law. They do not demand any immunity in exchange for giving up these precious rights.

If the Bureau were investigating an American police department, it would probably meet a stone wall, not a welcome mat. Many officers would refuse to answer FBI questions.

If the FBI persisted, these American police would demand immunity. And, if the policemen were granted statutory use-immunity under 18 U.S.C. §§ 6001 et seq. and compelled to testify before a federal grand jury, they would still probably be entitled to receive transcripts of their testimony. E.g., In re Sealed Motion, 880 F.2d 1367 (D.C. Cir. 1989); In re Heimerle, 788 F. Supp. 700 (E.D.N.Y. 1992).

Finally, we hope you don't expect us to respond to the Bureau's self-described ameliorations declaring that "no FD-302 or FBI-generated document will ever be introduced in a Haitian court" and that "it is entirely possible that no foreigner, such as an FBI Agent, would be allowed to testify in a Haitian criminal court." (7/14/95 at 2) As should be clear by now, this is not the concern. If our clients were afraid of the truth coming out in court, they could just remain silent.

July 27, 1995 Page 16

We are more worried that the truth will not come out in court (or anywhere else) if the Bureau continues its inflexible approach and fails to recognize a deserved exception to the FBI 302 routine. In our opinion, the Bureau actually should strive to prepare records that will pass muster and be admissible in any court.

In this, we are encouraged by the letter's remarks about a Judge of Instruction having to "reinvent the wheel" and permitting us as counsel for the witnesses to record his interviews. (7/14/95 at 2-3) If the "wheel" is worth inventing, it is worth inventing it now, not just later.

As for the prognostications, it is pure speculation to state that the interviews will not affect an Haitian investigation or prosecution. Anything is possible.

Enough said. Most respectfully, we suggest that you search the annals of the FBI for instances in which court reporters or tape recorders were permitted, study your rules and regulations, consult your colleagues at the Department of Justice and the Department of State, and find a way to let the interviews go forward.

Most investigative agencies would leap at the opportunity to take voluntary depositions of witnesses. Surely the Bureau can overcome a problem that most agencies would recognize as an opportunity.

To: William E. Perry Re: Haiti investigation

CC: Ambassador James Dobbins
Ambassador William Lacy Swing
Associate Deputy Attorney General Seth Waxman
Director Louis J. Freeh
Chief Division Counsel Edwin H. Boldt
Supervisory Special Agent Joseph I. Ciccarelli
Supervisory Special Agent Richard J. Giannotti
Associate Special Agent Paul E. Mallett
Hem. Jean-Joseph Exume
Ira J. Kurzban
Burton V. Wides
James McGuirk
Jean Baptiste Pierre-Cadet

# JAMES MCGUIRR. P. A.

BOI ALHAMBRA CIRCLE

CORAL GABLES. FLORIDA 30104

YELEPHONE 1308) 448-877/ FACSIMILE 1308) 448-9888

JAMES MCGUIRK GREGG T TOUNG

PAUL F. PENICHET

July 27, 1995

Louis J. Freeh
Director
Federal Buteau of Investigation
10th & Pennsylvania Ave, NW
Washington, D.C. 20535

RE: Haiti investigation

Dear Director Freeh:

Please find enclosed a courtesy copy of our correspondence to Deputy Assistant Director William E. Perry.

We want to alert you and your staff to a problem that might be coming to your attention if it cannot be resolved at a lower level.

The matter involves the type of record to be kept of the Bureau's interviews of Haitian government employees in the investigation agreed to by the governments of Haiti and the United States.

We are not requesting any action by you personally at this time; however, we do anticipate raising the matter directly with you in the event it is not worked out to the satisfaction of the Bureau and our clients.

Yours sincerely,

A VI

LAW OFFICES

## JAMES McGUIRK. P. A.

801 ALHAMBRA CIRCLE

CORAL GABLES. FLORIDA 00104

TELEPHONE (308) 445-8771 FACSIMILE (308) 445-9865

JAMES MEQUIRE

OF COUNSEL PAUL F. PENICHET

#### IMPORTANT NOTICE

THIS FACSIMILE TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND PROTECTED FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU (THE READER OF THIS NOTICE) ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSTBLE FOR DELIVERING THE FAX MESSAGE TO THE INTENDED RECIPIENT, DO NOT READ THE CONTENTS. FURTHER, YOU ARE HEREBY NOTIFIED THAT ANY UNAUTHORIZED DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.

TO: William E. Perry, Dep. Asst. Dir.
TO: Ambassador James Dobbins
TO: Ambassador James Dobbins
TO: Ambassador William Lacey Swing
TO: Assoc. Dep. Atty. Gen. Seth Waxman
TO: Louis J. Freeh. Director. FBI
TO: Chief Div. Counsel Edwin H. Boldt
TO: Sup. Spec. Agt. Joseph I. Ciccarelli FAX NO.: 1 202 324 4705
TO: Sup. Spec. Agt. Richard J. Giannotti
TO: Sup. Spec. Agt. Richard J. Giannotti
TO: Assoc. Spec. Agent Paul E. Mallett FAX NO.: 1 301 619 3699
TO: Assoc. Spec. Agent Paul E. Mallett FAX NO.: 1 301 619 3699
TO: Assoc. Spec. Agent Paul E. Mallett FAX NO.: 1 301 619 3699
TO: Assoc. Spec. Agent Paul E. Mallett FAX NO.: 1 301 619 3699
TO: Ira J. Kurzban
TO: Ira J. Kurzban
TO: Ira J. Kurzban
FAX NO.: 444 3503
FAX NO.: 444 350

LAW OFFICES

### JAMES MCGUIRK. P. A.

BOI ALMANGRA CIRCLE

CORAL GABLES. FLORIDA 00104

TELEPHONE (308) 448-8771 PACSIMILE (308) 448-8886

DREGG T TOUNG

PAUL F. PENICHET

July 27, 1995

William E. Perry Deputy Assistant Director Federal Bureau of Investigation 10th and Pennsylvania Avenues, N.W. Washington, D.C. 20535

Haiti investigation

Dear Mr. Perry:

We are writing to urge reconsideration of the Federal Bureau of Investigation decision that no court reporter be present at the interviews of the Haitian government employees who are our clients. We understand you are thoroughly familiar with this matter and are an appropriate Bureau official with authority to review the decision.

As you know, the Haitian government decided that counsel should be available to its employees. A team of two U.S. attorneys, Joseph Beeler and I, advised by Haitian counsel, has undertaken this representation. We have subdivided the work, and I have now met individually with all 15 individuals named in the June 28, 1995 letter from Supervisory Special Agent Richard Giannotti to Minister of Justice Jean-Joseph Exume. Each has accepted the offer of representation.

We have encouraged proceeding with the interviews, among other reasons, as a means of giving the Bureau insight into and understanding of these particular clients. We are confident your agents will learn, as we have in these past weeks, that they are courageous men committed to a new Haiti. These men previously served under an entirely different kind of regime; they mustered the lonely, personal courage to stand against it; some had to flee into exile under threat of death from their own superiors. The more your agents learn about them, the better for both countries.

We are now ready to go forward with the interviews. On July 13, 1995, we had a good meeting in Port-au-Prince with Chief Division Counsel Edwin H. Boldt, Supervisory Special Agent Joseph I. Ciccarelli and Special Agent Mark D'Amico about the interview logistics.

Mr. Perry July 27, 1995 Page two

The only significant matter not worked out involved whether to keep an impartial record of the interviews. On July 14, 1995, Chief Division Counsel Boldt wrote a letter advising that the Bureau opposed using a court reporter, apparently for security reasons.

In subsequent conversations with agents Boldt, Giannotti and Ciccarelli, I said we have no objection to the Bureau selecting the court reporter from any U.S. firm cleared for federal grand jury work. Indeed, my clients have the most professional and personal interest in maintaining the confidentiality of anyone involved in the investigation.

Nonetheless the Bureau insists that the clients agree to be interviewed by FBI agents who will later prepare non-verbatim summaries (FBI 302's) of what they believe are the relevant statements by the clients, which will then be incorporated in an investigative report to the governments of the United States and Haiti, without any client ever seeing the agents' summary of what he said. Presumably the first the clients will learn of what the agents wrote about them is when it is published.

We have been advised this was decided at the highest levels and, recently, that there is no appeal. This is an appeal to reason. Mr. Beeler is supporting it with a detailed memorandum submitted for your review.

The clients have asked why the Bureau does not want an impartial record kept of the interviews? We have received no good answer.

The clients have excellent reasons to request a record:

- 1. They are genuinely concerned about miscommunication with the agents. The Bureau's agents are conducting a purely local criminal investigation in a foreign country, involving a foreign culture, with the use of translators. Given these circumstances, I have advised my clients that not keeping a verbatim record of the interviews is a perilous way to do business. My clients have been quick to advise me that they never take statements in their investigations without submitting them to the interviewees for review and signature.
- 2. They need an independent, unassailable record to defend themselves against false reports of what was said. These reports could come from anywhere, most probably from some elements of the Haltian press, which as the Bureau very well knows from its own experience in Haiti, can be wildly inaccurate, polltleized and scurrilous. In that unhappy event, the clients would have a verbatim transcript to respond with the truth.

We urge you to consider modifying the Bureau's policy for this unique case for a separate reason: it would go far to allay fear.

Mr. Perry July 27, 1995 Page three

My clients are now very apprehensive. They initially welcomed the Bureau's assistance. What apparently happened next is a textbook case of international misunderstanding: as the Bureau commenced interviewing government employees, the Haitian Minister of Justice requested notification of who was being interviewed. The Bureau responded with it June 28 letter, which was then received by the persons listed as a singularly inappropriate way of enlisting their cooperation. It is fair to say that nobody intended such a result.

Granted that there are obvious problems that both sides must consider with care. I personally consider it a privilege to have some small part in forging a genuine professional link between the Bureau and police struggling to bring just and effective law enforcement to Haiti. It will benefit both governments, and most of all, the people of Haiti.

Yours sincerely,

JAMES McQUIRK, P.A

0 W:W.

cc: Ambassador James Dobbins
Ambassador William Lacy Swing
Associate Deputy Attorney General Seth Waxman
Director Louis J. Freeh
Chlef Division Counsel Edwin H. Boldt
Supervisory Special Agent Joseph I. Ciccarelll
Supervisory Special Agent Richard J. Giannotti
Hme. Jean-Joseph Exume
Joseph Beeler
Jean Baptiste Pierre-Cadet
Ira J. Kurzban
Burton V. Wides

# **MEMORANDUM**

TO: William E. Perry

Deputy Assistant Director

Federal Bureau of Investigation

FROM: Joseph Beeler

RE: Bertin/Baillergeau murder investigation in Haiti

DATE: July 27, 1995

We are writing you on behalf of clients--citizens of Haiti--who would like to help the Federal Bureau of Investigation solve the brutal murders it is investigating there. Speaking generally, as we must, these clients are serving there as professional law enforcement officials. They opposed the tyranny that tormented Haiti until recently. They have lived through terrifying times.

These clients commend the willingness of the United States to assist a fledgling democracy, and they appreciate the sacrifices of the individual FBI agents who are experiencing the hardships of working in Haiti. Moreover, they would like to see bridges built between the law enforcement establishment of our country and the one Haiti is trying to create.

Our clients are more than puzzled, however, by the FBI's refusal thus far to accede to the making of an impartial record of the interviewe they are willing to grant. This letter is an attempt by their counsel to persuade the Bureau to reconsider its position. We question the necessity for reliance upon the one-sided and unscientific FBI Form FD-302 (Report of Interview)

technique for making the record of what is said in the interviews. In this case, that technique is a recipe for trouble.

What do we propose? We urge simply that the FBI have a stenographer record each interview session verbatim by shorthend or mechanical means. Failing that, we suggest tape recording the interview sessions. The witness must naturally be given prompt opportunity to review the record memorializing what he said, just as he would be if he gave a deposition in the United States. We, as counsel, will then put this copy of the record in a bank vault.

Why do we want to ensure a substantially verbatim account of the interviews? The record needs to be complete and accurate for a number of very good reasons:

- This is a case fraught with cultural hurdles and language barriers. It would be easy for agents and witnesses alike to trip into miscommunication.
  - 2. The FBI is searching for the truth.
- 3. Moreover, an accurate record, such as that made by a certified court reporter, protects the FBI from any erroneous charges that its agents misunderstood a statement, mischaracterized what was being said or misbehaved.
- 4. Such an unimpeachable record also protects the witness when the FBI's final report is made public, if the report—or news media stories about the report—do not do justice to the interview. Often the best cure for misguided public opinion is the verbatim truth.

To: William E. Perry Re: Haiti investigation

- 5. Such an unimpeachable record also protects the witness if the content of an interview is ever leaked and the witness is portrayed in a false light.
- 6. In the event charges are eventually brought against any Haitian citizen, the citizen will enjoy the right to examine prior statements made by the witness. Our clients are law enforcement officials who believe in civil rights and, therefore, want the accused always to have a fair trial, free from dispute about the accuracy of prior statements.
- 7. Any record short of a substantially verbatim account recorded contemporaneously with the occurrence of the interview is prone to human error; invites unnecessary controversy; augurs the waste of time trying to reconstruct that which should have been recorded exactly in the first place; and inevitably clouds the integrity of the FBI's work.
- 8. Notwithstanding suggestions to the contrary, the FBI has from time to time afforded these safeguards to other witnesses. We do not want second-class treatment of our clients.

One would expect the Bureau to appreciate and accommodate witnesses who are willing to respond to questions and aid its investigation. In fact, one would anticipate an extra measure of accommodation when the Bureau is abroad and seeks to interview officers of a foreign sovereign.

To: William E. Perry Re: Haiti investigation

We understand the FBI's mission in Haiti is to assist the U.S. Department of State in its effort to help the Government of Haiti. Ambassador William Lacy Swing is involved in the discussions. Chief Division Counsel Edwin H. Boldt informed us that he has consulted periodically with Assistant United States Attorney John Haub, who is assigned to the U.S. Embassy. Indeed, we assume that assisting the State Department is part of the jurisdictional basis for the Bureau's presence and activities in Haiti. See 28 U.S.C. § 533(3).

In matters of foreign policy, one would, more than ever, expect the Bureau to be diplomatic. Particularly in matters involving the Republic of Haiti, the Bureau should be multilingual, culturally and racially sensitive, attuned to the expectations of witnesses, and respectful of local practices.

As in many jurisdictions throughout the free world, when Haitian police interview witnesses they show the resulting statement to the witness and ask him to sign it. For that matter, if the Government of Haiti were seeking judicial assistance from the United States to investigate in the United States to solve Haitian crimes, under American law the witnesses could require subpoenas and demand full deposition procedure. 28 U.S.C. § 1782; U.S. Attorneys Manual 9-13.540.

Why ie the FBI refusing, thus far, to go along with a procedure that is designed to create a true and correct record; a procedure it sometimes allows witnesses in the United States to

To: William E. Perry Re: Haiti investigation

reporting federal grand jury proceedings? See 28 U.S.C. §§ 753(a) and (g); Fed. R. Crim. P. 6(e)(2).

In the United States, the FBI uniform crime reports document ample incidents of violence in the American culture as well. But there is no documented problem of court reporters leaking grand jury secrets.

In the United States, court reporters fly to depositions all over the country. Miami is a short hop from Port-au-Prince. If the integrity of the court reporter is the problem, then the Bureau can solve it easily by choosing a stenographer who has proven trustworthy.

How can the FBI oppose the creation of a proper record? We only advocate a procedure that is tried and true. The United States Congress has legislated that transcripts certified by an official court reporter "shall be deamed prima facie a correct statement of the testimony taken and proceedings had." 28 U.S.C. \$ 753(b).

Surely you must recognize, an FBI 302 is no substitute for a transcript. In the United States, federal prosecutors argue almost every day that 302's are not reliable accounts of FBI interviews. These American prosecutors insist that the Reports of Interview are not sufficiently accurate and complete to serve as a fair foundation for cross-examining a witness. They invoke the Jencks Act, urge that the 302 does not contain "a substantially verbatim recital of an oral statement made by the witness," Fed. R. Crim. P.

To: William E. Perry Re: Haiti investigation

enjoy; a procedure that is acceptable in the foreign jurisdiction where it is operating? If the Bureau's stance is motivated by concerns about security, we can talk.

An FBI spokesperson, Edwin H. Boldt, sent a letter to my colleague James McGuirk, dated July 14, 1995. There the Bureau<sup>1</sup> mentions "documented incidents of violence in the Haitian culture" and observes that "[a]dding a court reporter, who may not feel constrained by the bounds of the attorney-client or PBI-interviewee relationship, could unnecessarily magnify the potential danger." (7/14/95 at 2) The short answer is for the Bureau to pick a court reporter who is constrained by professional obligations and whose personal integrity is known to the Bureau.

In the United States, official court reporters are trusted every day to keep secret the contents of side bar conferences, in camera hearings, and grand jury proceedings. As you know, it works very well. Why not select a good court reporter who has qualified to serve under the standards formulated by the Judicial Conference of the United States, who has been sworn faithfully to perform the duties of an official court reporter, and who has been cleared for

<sup>&#</sup>x27;Mr. Boldt signed this letter "Chief Division Counsel Port-au-Prince." The business card he handed us at a meeting the day before described him as "Principal Legal Advisor/Media Representative" based at a Cincinnati, Ohio, FBI field office. We will abbreviate references to his letter by the date "(7/14/95)" followed by the page or pages being cited.

To: William E. Perry Re: Haiti investigation

26.2(f)(2); 18 U.S.C. § 3500(e)(2), and oppose even turning over a copy of the report to the other side. See generally James ::. Cissell, Federal Criminal Trials §§ 809-10, at pp. 200-02 (3d. cd. 1992 & 1994 Cum. Supp.).

Moreover, in the United States the courts generally agree the FBI 302's are fallible. See, e.g., Palermo v. United States. 1: U.S. 343, 352-53 (1959) ("[S]ummaries of an oral statement which evidence substantial selection of material, or which were prepared after the interview without the aid of complete notes, and home rest on the memory of the agent, are not to be produced. Neither, of course, are statements which contain the agent's interpretation: or impressions"); United States v. Allen, 798 F.2d 985, 994 ( :: Cir. 1986) (prohibiting defense access to FBI reports and status; that Jencks material "was intended by Congress to describe material that could reliably and fairly be used to impeach the testimony or a witness") (citing Goldberg v. United States, 425 U.S. 94, 11. (1976) (Stevens, J., concurring)); United States v. Morris, F.2d 1391, 1401-02 (7th Cir.), cert. denied, 113 S. Ct. 380, 1.11 ... Ed. 2d 290 (1992); United States v. Claiborne, 765 F.2d 784, and the 02 (9th Cir. 1985), cert. denied, 475 U.S. 1120 (1986). It i. . rare case in which a judge rules that a 302 qualifies as a reliable prior "statement" of a witness.

In short, transcripts are presumed to be correct. 302/10 :-

July 27, 1995

Indeed, there has been a great deal of litigation over the years whether FBI agents have fully and accurately reported everything that was said during an interview. Why encourage such disputes?

The Bureau's July 14 letter stated that its practice for making internal records "is accepted in every Federal judicinal district in the United States..." (7/14/95 at 1) This observation of course means only that the Judiciary has not violated separation of powers and ordered your Executive Branch agency to refer a significant FBI 302 investigation technique. The Judiciary means certainly has not pronounced FBI 302's to be uniformly complete and correct, nor to be acceptable as evidence. Nor have the research courts prohibited the Bureau from doing better.

It should be obvious for the reasons outlined at the start of this letter, we all need a complete and accurate record to be made of the proposed interviews. That is the best way to help off controversy.

Equally obvious, the record should not be released until the investigation is complete and some necessity requires it. Making a record and publicizing it invoke far different considerations.

Professional law enforcement officers recognize that reports ordinarily should not be disseminated publicly where an investigation is pending. Sometimes they encourage witnesses not to tell anyone else what they have reported. But, in the United states, that is the witness' choice. Fed. R. Crim. P. 6 (crix) (no

July ..., 1995 Page 9

To: William E. Perry Re: Haiti investigation

obligation of secrecy may be imposed upon a federal grand jury witness); see Butterworth v. Smith, 494 U.S. 624 ([1994]). We believe that is the rule in free Haiti too.

You should rest assured that our clients have no intention of broadcasting what they may report in the course of giving an interview. Not orally nor by publishing a transcript. But they must be protected from leaks, lies, character assassination, and from political assassination by the foes of democracy.

There are many dangers. Our clients realize the data idealty of protecting them against leaks. When the investigation and cludes, the FBI will be presenting an official report to other asser whom it has no control.

Inaccuracy may be the greatest danger: Outright in a mation-whispers, gossip and lies made up without leaks; select and leaking; quoting out of context; paraphrasing; and other common distortions of that which was truly said. These are the product; of Man's imperfection. The best shield against plain old human error as well as malice and venality is a perfect record of what was said.

Court reporters are about as perfect as you can ed. Tapes can be doctored. Fred E. Inbau & John E. Read. Criminal Interrogations and Confessions 121 (1962) ("Another point to consider is the fact that since sound-recorded confessions are subject to undetectable tampering, they do not constitue the kind of unassailable evidence that is sometimes attributed to them.").

To: William E. Perry Re: Haiti investigation

Court reporters have proven to be dependable recorders of all kinds of proceedings.

We espouse a full and fair record of the interviews. That requires a substantially verbatim account made by a neutral person, ideally a certified court reporter. The burden should not fall on the Bursau to create an official record. Nor should anyone expect such a record to be accepted, especially if it consists only of FBI 302's.

The burden should not fall on the witness and him counsel to produce a record. No one would ever accept it an official or reliable; certainly the Bureau would not.

Naturally each side should take whatever notes it wants, and prepare whatever reports it desires. But the creation of two, possibly conflicting accounts is no answer. The creation of two consistent accounts is no answer either, if both everlook some detail or phrasing that turns out later to be important. Neither side needs to enter the fray. Neither side alone can repolve it.

The Bureau suggested in its letter that by wirtue of the presence of American counsel, our French/Creole specially Haitian counsel, and our interpreter, "the accuracy of [our] restricted notes and resultant internal report could be assured." (2774/90-1) This suggestion actually misses the point.

Neither the Bureau nor the rest of the world is willing to sign off on the accuracy of our internal reports. We must be protected by an unimpeachable recorder of the processings. We do

To: William E. Perry Re: Haiti investigation

not qualify; the Bureau does not qualify; a certified court reporter picked by the Bureau and accepted by us does.

We remain perplexed by the Bureau's unwillingness to accept information from witnesses who want only a few basic safeguards to memorialize the truth. Perhaps the Bureau forgets the importance of avoiding unnecessary controversy. We need only point out the Bureau's own recent problems with communications to underscore the value of good records to document discussions. See David Johnston, Early Questions Reported on Top F.B.I. Aide: Conflicting words from the F.B.I. and Justice Department, The New York Times, July 19, 1995, at 10A.

Further, the Bureau should recall the importance of instilling trust in its procedures and confidence in its conclusions. The experts on interrogation know that oral, unwritten and unrecorded statements are not well received by a skeptical public. Fred E. Inbau & John E. Reid, <u>Criminal Interrogations and Confessions</u> 121 (1962). Among other things, a full and accurate record made by a neutral recorder of events avoids charges that admissions have been fabricated, a loathsome police practice known as "verballing." Gisli H. Gudjonsson, <u>The Psychology of Interrogations</u>, <u>Confessions and Testimony</u> 22, 51 (1992). The FBI may never stoop to such practices; but how can it dispel suspicion when it eschews verbatim accounts?

July 27, 1995 Page 12

consider the circumstances too. This is Haiti. The FBI should be taken as ambassadors rather than invading military policemen.

Consider the gravity of the occasion. The witnesses interviewed and the persons who may be named in the interviews (or in public reports or leaks) have a vital interest in accuracy. Reputations may be destroyed. See generally United States v. Briggs, 514 F.2d 794 (5th Cir. 1975). Lives may be imperilled.

Frankly, the Bureau seems to be staking out a rather peculiar position. The FBI 302 practice is not universally followed by other law enforcement agencies, despite the Bureau's leadership in training.

We know that other federal agencies do not recoil at the idea of tape recording statements. We believe that most state and local police forces like tape recorders and signed statements. See Inbau & Reid, supra, at 121-22, 129-30 (stressing the importance of getting statements in a written document signed by the person being questioned). Police interviews in England and Wales are tape-recorded, with no undue interference resulting to the interrogation process. Gudjonsson, supra, at 39, 330.

Perhaps the Bureau is even a little confused about what the agency actually does. What is the real FBI practice? The letter declared that "[h]istorically, the FBI has not tape— or mechanically recorded its interviews, nor allowed others to do so." (7/14/95 at 1) We fear that this mistakes preference for practice.

In history there are instances in which the FBI has conducted interviews that were stenographically recorded. We challenge the Bureau to prove otherwise.

To be precise, we are reliably informed that, in history and practice, the FBI rarely permits an exact record to be made of interviews by its agents, but that there are exceptions. For example, the FBI has agreed to do so when the witness makes accurate recording a condition for granting any interview. Further, the FBI has required exact recording when the witness is a person making charges against the Bureau.

In fact, we can cite a court opinion documenting an instance of tape recording by an FBI agent. <u>United States v. Pacheco</u>, 489 F.2d 554, 565 (5th Cir. 1974) ("Two or three of the interviews ... were so lengthy and comprehensive that the interviewer, to ensure completeness and accuracy, recorded the conversation on tape and later made notes from the original recordings.") Further, we can cite another opinion demonstrating an instance in which an FBI stenographer took notes of witness interviews and transcribed them. <u>United States v. Lonardo</u>, 350 F.2d 523, 525 (6th Cir. 1965). So history supports our appeal for equal treatment.

The next question has to be, what does the Bureau really allow. What is the genuine FBI policy? The letter advised that the FBI "could not approve" our request for properly recorded interviews. (7/14/95 at 1) We took this to be a polite substitute for "will not approve." But yesterday my colleague, James McGuirk,

July 27, 1995 Page 14

received a hand-delivered letter from Associate Special Agent in Charge Paul E. Mallett declaring that verbatim transcription and tape recording of interviews are both in contravention of established FBI policies and procedures. This must be mistaken.

We would certainly like to know of any rule or regulation that forbids the use of court reporters or tape recorders to make sure that an interview is accurate. We would like to see any provision of the FBI Manual of Instructions that precludes gathering evidence in this fashion. We would like to read any release in an FBI Law Enforcement Bulletin that truly prohibits the agency from employing these techniques.

If the agency is genuinely prevented from stenographic or sound recording of interviews, please cite us chapter and verse. If the agency ever has discretion to do so, please say so, and explain how this discretion is exercised.

<sup>&</sup>lt;sup>2</sup>This July 26, 1995, letter also assumed that our requests are "conditions" for the granting of an interview. This is an error. Each client has to be informed accurately about FBI policy and procedure before he can decide what conditions, if any, to attach.

The letter also stated as fact that we have made the submission of interview questions to counsel in advance of the interviews a further condition of the interviews. This is another error. The idea of previewing questions was mentioned so casually, if at all, during the July 13, 1995, meeting in Port-au-Prince that the province of t

These mistakes in the July 26, 1995, letter illustrate the hazards of oral communication, and dramatize the necessity for a

In any event, the Bureau needs to look carefully at the circumstances and to put them in proper perspective. Our clients want to help. They are willing to forego their rights to remain silent, rights guaranteed under Article 46 of the Constitution of the Republic of Haiti and by international law. They do not demand any immunity in exchange for giving up these precious rights.

If the Bureau were investigating an American police department, it would probably meet a stone wall, not a welcome mat. Many officers would refuse to answer FBI questions.

If the FBI persisted, these American police would demand immunity. And, if the policemen were granted statutory use-immunity under 18 U.S.C. §§ 6001 et seq. and compelled to testify before a federal grand jury, they would still probably be entitled to receive transcripts of their testimony. E.g., In re Sealed Motion, 880 F.2d 1367 (D.C. Cir. 1989); In re Heimerle, 788 F. Supp. 700 (E.D.N.Y. 1992).

Finally, we hope you don't expect us to respond to the Bureau's self-described ameliorations daclaring that "no FD-302 or FBI-generated document will ever be introduced in a Haitian court" and that "it is entirely possible that no foreigner, such as an FBI Agent, would be allowed to testify in a Haitian criminal court." (7/14/95 at 2) As should be clear by now, this is not the concern. If our clients were afraid of the truth coming out in court, they could just remain silent.

To: William E. Perry Re: Haiti investigation

We are more worried that the truth will not come out in court (or anywhere else) if the Bureau continues its inflexible approach and fails to recognize a deserved exception to the FBI 302 routine. In our opinion, the Bureau actually should strive to prepare records that will pass muster and be admissible in any court.

In this, we are encouraged by the letter's remarks about a Judge of Instruction having to "reinvent the wheel" and permitting us as counsel for the witnesses to record his interviews. (7/14/95 at 2-3) If the "wheel" is worth inventing, it is worth inventing it now, not just later.

As for the prognostications, it is pure speculation to state that the interviews will not affect an Haitian investigation or prosecution. Anything is possible.

Enough said. Most respectfully, we suggest that you search the annals of the FBI for instances in which court reporters or tape recorders were permitted, study your rules and regulations, consult your colleagues at the Department of Justice and the Department of State, and find a way to let the interviews go forward.

Most investigative agencies would leap at the opportunity to take voluntary depositions of witnesses. Surely the Bureau can overcome a problem that most agencies would recognize as an opportunity.

cc: Ambassador James Dobbins
Ambaesador William Lacy Swing
Associate Deputy Attorney General Seth Waxman
Director Louis J. Freeh
Chief Division Counsel Edwin H. Boldt
Supervisory Special Agent Joseph I. Ciccarelli
Supervisory Special Agent Richard J. Giannotti
Associate Special Agent Paul E. Mallett
Hem. Jean-Joseph Exume
Ira J. Kurzban
Burton V. Wides
James McGuirk
Jean Baptiste Pierre-Cadet



U.S. Departm f Justice

Federal Bureau of Investigation

August 16, 1995

In Reply, Please Refer to File No.

Mr. James McGuirk, Esg. Attorney at Law 201 Alhambra Circle, Suite 711 Coral Gables, FL 33134

Re: Bertin/Baillergeau Assassination Investigation

Dear Mr. McGuirk:

On July 27, 1995, other Federal Bureau of Investigation (FBI) empl-yees and I received facsimile transmitted copies of a letter written by you and a memorandum prepared by Mr. Joseph Beeler. On behalf of the FBI, I am responding to these documents. In your letter you stated that you are providing legal counsel to 15 Haitian government employees, whom the FBI desires to interview regarding the Bertin/Baillergeau assassination investigation. You and Mr. Beeler expressed in communications that you support the continued investigation of the assassinations and were interested in facilitating the interview of your clients by the FBI.

The FBI's mission in Haiti is to conduct the most objective and thorough investigation possible under the circumstances. For that reason, we cannot concur a priori with your assertion that you could ethically represent all 15 individuals. Indeed, we think it is highly likely that conflicts of interest will develop such that you could not fairly represent the individual interests of all 15 persons and that proceeding on this basis might compromise the FBI's investigative efforts and/or taint the work-product of the investigation under Haitian law. Nonetheless, we are prepared to proceed on a case-by-case basis and review the matter following each interview.

Mr. Beeler's memorandum references a conversation between you and FBI agents regarding the FBI providing you with interview questions prior to the interview of the Haitian government employees. Consistent with its customary and standard interviewing procedures, the FBI will not provide interview questions for previewing prior to the interviews. To use preauthorized questions would not provide investigators with the latitude to explore spontaneous or ancillary issues in the pursuit of an investigation reflective of an accurate portrayal of events and an impartial resolution. It is important, we believe, for the FBI to follow its standard interview procedures to the extent possible. To do otherwise without good cause will detract from the credibility of any findings -- a result we are certain you or your clients do not intend.



Under the unique circumstances of this case, however, the FBI is willing to have an independent court reporter present during the interviews to make a record of the interview. The court reporter will be commissioned by the FBI to prepare a verbatim transcript of the interview. The verbatim transcript will be handled in a manner similar to United States Federal Grand Jury material: it will be kept entirely confidential and will be provided to the appropriate Haitian government entity or official upon completion of our investigation. As with grand jury transcripts, copies will not be provided to you or your client(s) for retention or review.

If one or more of your clients are willing to proceed with an interview on the foregoing basis, please contact me at telephone number (305) 944-9101. If I do not hear from you within 10 days of the date of this letter, the FBI shall assume that none of your clients is willing to be interviewed, and we shall proceed acco.Jingly.

Sincerely yours,

Paul E. Mallett Associate Special Agent in Charge



Burton V. Wides Tel 202/857-6035 Fax 202/857-6395 August 17, 1995

Lt. Gen. James R. Clapper, Jr. Director Defense Intelligence Agency 7400 Defense Pentagon Room 3E258 Washington, D.C. 20301-7400

ATTENTION: Michael F. Munson, Deputy Director

Dear General Clapper:

This letter addresses recent published allegations about supposed conclusions of the U.S. Military Intelligence officials that former Prime Minister of Haiti René Preval and two associates have orchestrated numerous recent assassinations of political opponents of President Aristide.

Our firm represents the Government of Haiti ("GOH"). I am writing officially on behalf of the Government as its authorized representative in this matter concerned.

In his August 7, 1995 column appearing in the Washington Post Op Ed page and other American newspapers, Robert Novak states:

"Political murders here since the restoration of Jean-Bertrand Aristide, traceable to close associates of the Haitian president, have reached at least 80, while the U.S. Embassy looks the other way.

The number of killings and their connection with the presidential palace are provided by <u>U.S. military intelligence</u>." (Emphasis added.)

Mr. Novak next quotes U.S. Ambassador William Swing to the effect that, among the killings, the death of Mireille Durocher Bertin last March is

"the only one anybody talks about . . . . There is no proof of a political murder. Even if you counted one or two of them as a political murder, the number is very small."

Mr. Novak then continues:

"U.S. military intelligence disagrees. Some 80 murders, officers say, are political and are traced to the presidential palace. Rene Preval, Aristide's lieutenant and possible successor, has organized

Arent Fox Kintner Plotkin & Kahn • Washington, DC New York, NY • Vienna, VA • Bethesda, MD • Budapest, Hungary • Jeddah, Kingdom of Saudi Arabia Lt. Gen. James R. Clapper, Jr. August 17, 1995 Page 2

"violence brigades" that American officers believe perform the killings.

Associated with Preval are Renaud Bernardin and Gerard Pierre Charles, both tied to Libyan state terrorism, according to U.S. sources. They are linked to Aristide's allies in the Haitian military, led by Col. Mondesir Beaubrun, the minister of the interior." (Emphasis added.)

Mr. Novak made a similar assertion, citing U.S. Military Intelligence, in a further column on Thursday, August 10.

I am aware that reporters sometimes seek to disguise the true identity of their sources. For example, Mr. Novak might, in fact, have relied on individuals in other U.S. agencies for these assertions. I also am aware that Mr. Novak undoubtedly talked to Haitians who have long spread malicious lies about President Aristide and his colleagues.

Nevertheless, Mr. Novak has now told the American and Haitian publics, as well as officials and other members of the media in both countries and around the world, that U.S. Military Infelligence believes that these three prominent political figures have orchestrated the killing of many Haitians. I need not belabor the harm such allegations cause.

Given this background, the point of this letter is to ask whether such allegations, in fact, represent the current position of the DIA, or the intelligence branch of any Service. Please let me know if this is the case and, if so, whether it is the DIA or a Service Intelligence Branch that has reached such conclusions.

If these statements do represent the official assessments of U.S. Military Intelligence, then I would like to meet with you or your senior designated representative as soon as possible, in order to provide you with important information regarding systematic bias and defects in U.S. Military Intelligence collection in Haiti caused by its past, and apparently continuing, excessive reliance on

 sources intimately connected to the coup regime and their supporters, including members or supporters of FRAPH and members of groups who

I say "current position" because, according to the press stories, immediately after the killings of Mr. Jeauneau Baillergeau and Madame Mireille Durocher Bertin, several U.S. military sources in Haiti and at the Pentagon stated almost as a firm conclusion that Interior Minister Beaubrun had orchestrated their deaths. This was expressly based on the allegation of Mr. Claude Dougé, a U.S. Army interpreter and informant, that one Patrick Moise had confessed Beaubrun's alleged plot to Dougé. Presumably, any intelligence appreciation at this point would be more thorough and based on cross-checking a variety of all source material, including Mr. Moise's former involvement with the U.S. Intelligence Community.

Lt. Gen. James R. Clapper, Jr. August 17, 1995 Page 3

> have been consistently opposed to restoration of Democracy and to President Aristide's administration in Haiti;

- sources who have reason to fear application of the criminal justice process to homicides and torture committed during the coup regime; and
- · sources involved in narcotics traffic.

If the statements attributed by Mr. Novak to "U.S. military intelligence" do not reflect the considered assessment of U.S. Military Intelligence, then may I respectfully suggest that you:

- Issue a statement as nead of DIA (making clear you also are speaking for each of the Service intelligence branches, as well) that disavows the assertions in Mr. Novak's columns to which U.S. Military Intelligence does not subscribe. This is necessary, since Mr. Novak obviously will dismiss any disavowal by State Department and other non-Pentagon officials in light of his claimed military intelligence sources.
- Request the OSD Inspector General's Office or the DIA's Inspector General, to promptly investigate which officers are misrepresenting their own views as the views of U.S. Military Intelligence;
- Have the appropriate senior DOD military or civilian officials issue orders to make clear that individual military intelligence officers should cease misrepresenting such U.S. assessments to Haiti officials, to officials in other U.S. Government agencies, or to the media; and

In addition, as you are undoubtedly aware, the Federal Bureau of Investigation is still conducting an investigation into the homicides of Baillergau, Durocher-Bertin, Lee Gonzales and several other persons, in order to assist the GOH's inquiry into those killings. Have any U.S. Military Intelligence personnel in Haiti told the FBI that the MI Command <a href="https://docs.org/10.16/">https://docs.org/10.16/</a> about who is responsible for those killings -- as opposed to simply having provided the Bureau with information about the victims and about those named as possible suspects in the killings? If so, then it is important for the Bureau to be made aware of whether those MI officers are:

- speaking for "U.S. military intelligence";
- · speaking for the U.S. MI Command in Haiti; or
- speaking merely for themselves.

It will also be important for the Bureau to be made aware of the above-mentioned systemic defects in the U.S. MI intelligence collection and assessment process regarding Haiti, insofar

Lt. Gen. James R. Clapper, Jr. August 17, 1995 Page 4

as the Bureau is relying on the product of that process as a primary basis for conducting its investigation or reaching its conclusions.

Please note that none of the requests I am making on behalf of the GOH involve the issue of "protecting sources and methods". On the one hand, a statement by you or your successor disavowing alleged views of "U.S. military intelligence" reported in Mr. Novak's columns manifestly reveals nothing about sources and methods. On the other hand, even if your response to this letter is that Mr. Novak's claims do accurately reflect the official position of DIA or a Service intelligence branch, that could not, as a practical matter, materially add to any alert that the Novak column, itself, would have provided about U.S. knowledge or intelligence sources and methods.

Thank you for your prompt attention to all matter.

Respectfully,

Burton V. Wiles Burton V. Wides

BVW/ice

cc: Under Secretary of Defense for Policy Walter Becker Slocombe

Director, Central Intelligence, John M. Deutch

LAW OFFICES

## JAMES McGuirk, P.A.

BOI ALHAMBRA CIRCLE

CORAL GABLES, FLORIDA 33134

TELEPHONE (308) 448-8771 FACSIMILE (308) 449-8866

JAMES MCGUIRK

PAUL F PENICHET

August 25, 1995

### VIA FACSIMILE AND U.S. MAIL

Paul E. Mallett Associate Special Agent in Charge Federal Bureau of Investigation 16320 NW 2nd Avenue Miami, FL 33169

RE: Haiti investigation

Dear Mr. Mallett:

I am in receipt of your letter dated August 16, 1995.

Your letter concludes that "[i]f I do not hear from you within 10 days of the date of this letter, the FBI shall assume that none of your clients is willing to be interviewed, and we shall proceed accordingly."

This letter is just a courtesy to confirm that we will respond within 10 working days, or by Thursday, August 31, 1995.

Thank you for your consideration.

Yours sincerely,

( ) ////

James McGuirk

ZDD+ 0 F GHA

Joseph Beeler

cc:

## NATIONAL SECURITY COUNCIL WASHINGTON, D.C 20508

August 28, 1995

Dear Mr. Wides:

Your letter dated 23 August arrived here by FAX today, 28 August.

I have forwarded it to the Department of State, which is the appropriate agency to receive official requests from Loreign governments.

I suggest that you contact Ambassador James Dobbins (202-647-2817) or, in his absence, Ambassador James Leonard (202-647-5088). I have also suggested to the State Department that they note to the Government of Haiti that official communications from it should be made by its ambassador or embassy staff.

Richard A. Clarke Special Assistant to the President

cc: State Dept. - Amb. Dobbins
Amb. Leonard



Burton V. Wides Tel: 202/857-6035 Fex: 202/857-6398 August 23, 1995

Mr. Richard A. Clarke
Special Assistant to the President
and Senior Director
Global Issues and Multinational Affairs
National Security Council
OEOB 302
17th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20506

Dear Mr. Clarke:

As you know, the Government of Haiti, with the participation of the FBI, has been investigating the murders last March of Juneau Baillergeau and Mireille Durocher-Bertin., I have been officially assisting the Government's efforts in this regard.

In connection with this effort, I would like to interview the following U.S. personnel who have important relevant knowledge regarding accusations about a plot to murder Mdm. Bertin made by one Mr. Claude Douge to a female Special Forces, U.S.A. sergeant whom Mr. Douge and his wife called "Sgt. Rosario" (believed to be her last name):

- (1) "Sgt. Roserio" -- Sgt. Roserio also was the person who passad on to her superiors Mr. Douge's warning about the alleged plot against Mdm. Bertin. Douge insists he told her the plot also included killing Leslie DeLatour, a senior official in the Aristide Administration. Yet, Gen. Fischer's letter to the Haitian Government warning of the plot referenced only Mdm. Bertin. Gen. Fischer did not warn the GOH about a threat to DeLatour until after Mdm. Bertin had been killed about a week later -- and that U.S. warning actually originated from Mr. DeLatour, himself, who had learned about Mr. Douge's claim independently and passed it on to the U.S. Embassy. Therefore, either Douge is lying about mentioning the danger for DeLatour to Rosario, or, for some reason, the U.S. Army chain of command failed to promptly relay his warning about Mr. DeLatour to the Haitian Government -- so that the immediate news leaks indicated only that there had been a plot to kill a vocal opponent of the Aristide Government.
- (2) One "Mr. Foster" A partner or companion of Sgt. Rosario when she visited Mr. Douge at his home on Saturday, March 19 and other occasions. Douge made his reported accusation to Rosario and Mr. Foster.
- (3) Sgt. Clark -- A Haitlan-American soldier in the U.S. component of the MNF (possibly Special Forces). He played an active role in the initial intensive interrogation of the persons arrested in connection with the Bertin-Baillergeeu murders and then continued for a period working with the FBI unit on the case both as an interrogator and as an interpreter.

Arent Fox Kintner Plotkin & Kahn • Washington, DC
New York, NY • Vismon, VA • Belaseda, MD • Bedapess, Hungary • Jeddah, Kingdom of Saudi Arabia

Mr. Richard A. Clarke August 23, 1995 Page 2

- Col. Brian Bush, U.S.A. -- The Staff Advocate General officer for General Fischer who helped manage the initial investigation of the murders.
- (5) Col. (first name unknown) Dallas, Special Forces, U.S.A. -- He had senior responsibility for U.S. forces in connection with the Haitian soldiers' "mutiny" over the period December 23-26, 1994. Those collateral events are very relevant to assessing Mr. Douge's accusations against Minister Beaubrun.
- Name Unknown The soldier in the administrative section of the 25th Division in charge of negotiating the damage claim by Mr. Baillergeau against the U.S. Army for alleged damage to his airplane. The U.S. claim that it repeatedly rejected all but a negligible "nuisance suit" settlement, including rejection of his claim on the morning of the killings, is difficult to reconcile with the fact of the victims allegedly being on their way to another meeting at Camp Democracy the same afternoon when they were shot.

While these persons are all U.S. military personnel, with the possible exception of "Mr. Foster", I am asking the NSC office to arrange for their being made available, since my request may implicate national policy level issues, or at least requires coordination among several Executive Branch Departments. I am, however, also providing Under Secretary of Defense Slocombe with a copy of this correspondence.

Thank you for your prompt attention to this matter.

Sincerely yours,

Buton V. Wiles

Burton V. Wides

BVW/ice

Prime Minister Smark Michel cc:

Under Secretary of Defense for Policy Walter Becker Slocombe

LAW OFFICES

## JAMES MCGUIRK, P.A.

201 ALHAMBRA CIRCLE BUITE 711

CORAL GABLES, FLORIDA BBIB4

TELEPHONE (308) 448-8771 FACSIMILE (308) 448-8888

GREGG T. TOUNG

PAUL F. PENICHET

September 1, 1995

## Via Facsimile and U.S. Mail

Paul E. Mallett Associate Special Agent in Charge Federal Bureau of Investigation 16320 N. W. Second Avenue Miami, Florida 33169

Dear Mr. Mallett:

We appreciate very much your letter of August 16, 1995, conveying the Bureau's willingness to utilize a court reporter. There is much wisdom in letting us keep a copy of the transcripts for the clients, and we believe the Bureau should reconsider.

Your letter did raise a new matter: you put us on notice that the Bureau contends that we are laboring under an impermissible conflict of interest. This requires immediate attention.

Joe Beeler has prepared a memorandum for your consideration and is sending it under separate cover. After we hear back from you, we will convey your response along with our recommendations to the clients, then report back to you.

Yours sincerely,

X, M

cc: Joseph Beeler

ALSAC Mallett

LAW OFFICES

JOSEPH BEELER, P.A.

300 EXECUTIVE PLAZA . 3050 BISCATHE BOULEVARD . MIAMI. FLORIDA 33137 . TELEFHONE (305) 576-3050

## IMPORTANT NOTICE

THIS FACSIMILE TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND PROTECTED FROM DISCLOSURS UNDER APPLICABLE LAW. IF YOU (THE READER OF THIS NOTICE) ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE FAX MESSAGE TO THE INTENDED RECIPIENT, DO NOT READ THE CONTENTS. FURTHER, YOU ARE HEREBY NOTIFIED THAT ANY UNAUTHORIZED DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.

## PACSIMILE TRANSMISSION

DATE: 09.06.95	
TO: USIX Sp. agent Paul E. Ma	elett fax no.: 787-6678
FROM: Jesupe Beller	
The following facsimile tran	smission consists of 21 pages,
including this cover page. If	you do not receive all of the pages,
please contact our office at (3	05) 576-3050. If you wish to reply
to us by FAX, our FAX number is	(305) 576-8080.
COMMENTS: MULE doctions	investigation dated
Callingian much	Investigation march
September 6, 1995.	
	BEARCHED MODEST  SERVALUZED FILED

# **MEMORANDUM**

TO: Paul'E. Mallett

Associate Special Agent in Charge

FROM: Joseph Beeler

DATE: September 6, 1995

RE: Bertin/Baillergeau murder investigation in Haiti

### INTRODUCTION

We are pleased that the Federal Bureau of Investigation has recognized the desirability of having a transcript of the interviews. This is progress.

More is needed. In your August 16, 1995, letter written "[o]n behalf of the FBI" to James McGuirk you reply to a July 27, 1995, letter from Mr. McGuirk to Deputy Assistant Director William E. Perry and a Memorandum of the same date from me (Joseph Beeler) to Mr. Perry. Unfortunately, your letter raises a new problem, belatedly suggesting that we, as counsel for the witnesses, labor under a conflict of interest; and overlooks much of what we said about the necessity of a witness to have a copy of his interview transcript. Let us explain.

## I. THE BUREAU'S CONFLICT OF INTEREST CLAIM

Your August 16 letter declares that the FBI "cannot concur a priori with your assertion that you could ethically represent all 15 individuals." (Page 1) Actually, Mr. McGuirk's letter simply stated that a team of attorneys represented all 15 individuals named in the June 28, 1995, letter from Supervisory Special Agent Richard J. Giannotti to Minister of Justice Jean-Joseph Exume. Neither Mr. McGuirk's letter nor my Memorandum made any assertions

about ethics. Thus, it is your letter that has raised the conflict of interest issue, a hurdle that we thought had been crossed when our clients accepted us as counsel.

In essence, you seem to have interjected a claim that we, as counsel for the witnesses, are acting unethically. This requires us to inform our clients of your concerns; meet with them, again, to discuss the representation; and revisit the choice of counsel questions.

# A. The Law Regulating Conflicts of Interest

We may not understand the Bureau's claim. Are you saying that Mr. McGuirk cannot ethically represent all of his clients simply because of potential conflicts of interest? Or are you aware of facts indicating actual conflicts of interest? Or are you saying that in a criminal investigation the law presumes that there is an irreconcilable conflict of interest whenever more than one witness chooses to be represented by the same lawyer? Or that there is some number of clients beyond which multiple representation is impermissible? Please enlighten us.

Meanwhile, we will attempt to explain our understanding of the law and practice governing conflicts of interest. The canons, codes or rules of ethics in every American jurisdiction allow multiple representation. Moreover, it is not unusual for one lawyer to represent more than one client in the same investigation. The lawyer must be careful, of course, that no client's individual interests are sacrificed. We have been alert to this

responsibility and do not know of any actual conflict. (For your convenience, we have enclosed a copy of Rule 4-1.7 of the Florida Rules of Professional Conduct and the official Comments accompanying the rule. The Florida rule and comments are based upon the American Bar Association Model Rules of Professional Conduct. The Florida ethics rules have been adopted by federal courts in Florida. <u>F.g.</u>, S.D. Fla. L.R. 11.1.C. The ABA Model Rules have, of course, been adopted by other state and federal courts throughout the United States.)

There is no ethics rule based upon the number of clients Your letter cites no authority for its "a priori" theory, and the courts have rejected such an approach. E.q., In re Investigation Before April 1975 Grand Jury, 531 F.2d 600 (D.C. Cir. 1976) (in federal grand jury investigation, court of appeals rejects prosecutor's bald argument that a lawyer had a blatant conflict of interest by simultaneously representing 21 newspaper pressmen plus their union president and vacates order requiring each to retain separate counsel); In re Special Grand Jury, 480 F. Supp. 174 (E.D. Wis. 1979) (in federal grand jury investigation, court refuses to disqualify law firm that was simultaneously representing 23 present and former employees of the Miller Brewing Company, even though the legal fees were being paid by the corporation); Matter of Grand Jury Empaneled, January 21, 1975, 536 1009 (3d cir. 1976) (court of appeals disqualification of lawyer who was simultaneously representing nine

officers and employees of the National Maritime Union, even though each of the nine witnesses invoked the protection of the Fifth Amendment and refused to testify before the grand jury); SEC v. Chapo, 533 F.2d 7 (D.C. Cir. 1976) (in a formal SEC investigation of insider misconduct, court of appeals refuses to curtail attorneys who were simultaneously representing nine witnesses, even though three of these clients were principal targets of the investigation and two of these pleaded the Fifth Amendment); Matter of Special February 1977 Grand Jury, 581 F.2d 1262 (7th Cir. 1978) (court of appeals declines to order disqualification of an attorney who simultaneously represented multiple grand jury witnesses, even though two of these clients had been immunized).

Speaking generally of the simultaneous representation of a corporation and/or its officers and employees, commentators have concluded that "[t]he approaches of the courts vary, especially when grand jury proceedings are involved, but no hard and fast rule precludes such multiple representation." Samuel R. Miller & Irwin H. Warren, "Conflicts of Interest and Ethical Issues for the Inside and Outside Counsel", Chap. 9 in Section of Litigation, American Bar Association, The Corporate Litigator 145 (1989) (endnote deleted). Similarly, legal scholars—indeed, ones who have served with the Office of the Solicitor General—have found that "in the federal courts there is no bright line standard for assessing the propriety of representing multiple witnesses or for evaluating

other potential conflicts of interest." Sara Sun Beale & William C. Bryson, 1 Grand Jury Law and Practice § 6:20, at p. 110 (1986).

The standard is refined, not crude. It demands that the lawyer look below the surface and weigh the facts. McAlinden v. Wiggins, 543 F. Supp. 1004, 1006 (S.D.N.Y. 1982) ("Although plaintiff vehemently asserts that the inherent conflicts in this joint counsel arrangement mandate [the lawyer's] automatic disqualification, each case must be independently reviewed on its facts to determine if the severe remedy of disqualification is merited.")

In short, there is no rule of thumb for tossing lawyers out of a case and stranding their clients. This, we believe, is basic law.

## B. Other Problems with the Bureau's Claim

You should recognize that the Bureau can only have a limited role in asserting a conflict of interest against counsel for the witnesses. Ordinarily, multiple representation is a matter to be decided by the lawyer and the clients without supervision by executive branch agencies. See "Preemble: A Lawyer's Responsibilities," Florida Rules of Professional Conduct. (A copy of this Preamble is enclosed too.) The rules of ethics teach that when a conflict is charged by an opposing party, the "objection should be viewed with caution, however, for it can be misused as a technique of harassment." Comment to Rule 4-1.7, Florida Rules of Professional Conduct; Preamble, supra; accord Weaver v. Millerd,

819 P.2d 110 (Ida. App. 1991) (rules of athics serve as a guide for lawyering; they are not intended to be used as procedural weapons; assertions of conflict by an opposing party should be viewed with caution).

You should also realize that the Bureau's timing does not help the cituation. Why did the FBI wait more than a month after it knew of the multiple representation to raise an objection? On July 4, 1995, Mr. McGuirk telephoned the FBI in Port-au-Prince on behalf of one client. On July 5 he called again on behalf of another client. On July 6 he called on behalf of three more. On July 10 Mr. McGuirk faxed a letter to Supervisory Special Agent Giannotti listing 13 witnesses he was representing. (That list, of course, has been supplemented.)

When we, the three lawyers for the witnesses, met with the three representatives of the Bureau in Port-au-Prince on July 13, 1995, we volunteered that we were sensitive to the potential for conflict of interest, and we explained that we were proceeding carefully and cautiously. In the Bureau's July 14 letter to James McGuirk, FBI Chief Division Counsel Edwin H. Boldt, who had attended the meeting, addressed a number of issues discussed there but did not complain that counsel for the witnesses were laboring under any potential conflict of interest.

Given this history, it is surprising, to say the least, that the FBI would raise a conflict of interest objection for the first time in an August 16 letter. To: Paul E. Mallett

Re: Bertin/Baillergeau murder investigation

September 6, 1995

Page 7

Moreover, the Bureau's solution is problematical, to say the least. The FBI (1) claims a conflict of interest problem, then (2) insists that regardless of it we proceed to counsel our clients about important decisions and represent them at interviews, and (3) adds that the FBI will deal with the issue after each client has made his decision and given an interview represented by supposedly conflicted counsel. (Page 1) In the same paragraph the letter declares it is highly likely "that proceeding on this basis might compromise the FBI's investigative efforts and/or taint the work-product of the investigation under Haitian law." (Page 1)

Our clients do not want a flawed investigation nor a tainted result. They want the killers identified and the murders stopped.

## C. Resolving the Issue

Conflict of interest issues must be addressed at the threshold. See Redd v. Shell Oil Co., 518 F.2d 311 (10th Cir. 1975). Further, "legal ethics are pragmatic and to be applied where real, not speculative harm is involved." Reddick v. Summit House, Inc., 835 F. Supp. 137, 146 (S.D.N.Y. 1993). So that the question can be resolved responsibly, the Bureau should disclose all the facts from which it deduces we are disabled by an unethical conflict of interest. Please inform us of the following:

 What facts suggest a conflict of interest? As the case law demonstrates, conflict and disqualification decisions must be based on facts. To: Paul E. Mallett
Re: Bertin/Baillergeau murder investigation
September 6, 1995
Page 8

- 2. Which clients have interests that are in conflict with the interest of other clients? Your letter asserts, "It is highly likely that conflicts of interest will develop such that you could not fairly represent the individual interests of all fifteen persons ..." (Page 1) You need to divulge facts that are so likely to develop into a conflict of interest and to specify which client may be injured.
- 3. If we proceed on the basis of multiple representation as planned, precisely how will this "compromise the FBI's investigative efforts," as you forecast? (Page 1) Do you have anything specific in mind?
- 4. If we proceed on the basis of multiple representation, precisely how will this "taint the work-product of the investigation under Haitian law," as you predict? (Page 1) Do you have a legal opinion available that we can review with our Haitian counsel?
- 5. Our clients, as law enforcement officers, would like to share with the Bureau how they believe the crimes should be investigated. Nonetheless, as their counsel, we are now obliged to ask the usual questions. As to each client, is he a "subject" of the investigation? Is he a "target" of the investigation? These questions are routinely asked and answered in federal investigations. Indeed, there is "longstanding internal practice" of the Department of Justice to warn grand jury witnesses if they are targets or subjects

of an investigation and to advise them of their rights. See United States Attorneys' Manual 9-11.150.

- 6. To assist us further in resolving the Bureau's claim, are you able to furnish us any prior statements attributed to any of our clients? We will use this information to advise each client intelligently whether there is an arguable conflict of interest and to discuss whether he ought to waive it.
- 7. How, exactly, does the Bureau propose to "review the matter following each interview"? (Page 1) What procedure does the Bureau have in mind? What standard will be applied? Who will decide any disagreements that may result?
- 8. In the Bureau's view, how many witnesses can a lawyer represent without being a priori conflicted?

In conclusion, you have put us on general notice of a conflict of interest contention. You have further suggested the problem might be resolved later, at some risk. We feel obliged to request the basis for your contention and to address the obstacle immediately.

## II. THE DIFFICULTIES OF SECRET TRANSCRIPTS

When we meet with our clients to discuss the Bureau's conflict of interest claim, we would like to tell them that the FBI will let each one see what the court reporter has taken down as his statement and let his counsel retain a copy. Thus we ask the FBI

to reconsider its pronouncement to Mr. McGuirk that "copies (of transcripts) will not be provided to you or your client(s) for retention or review." (Page 2) That is a proposal that no lawyer worth his salt could recommend to a client.

## A. The Pursuit of Equality

Frankly, we do not understand why the Bureau insists upon second-class treatment of our clients. In my July 27, 1995, Memorandum to William E. Perry I stated that in history and practice the FBI has permitted an exact record to be made of interviews by its agents when the witness made accurate recording a condition for granting any interview. (Page 13) Our assertion that the FBI has, upon demand, permitted an exact record to be made of voluntary interviews carries with it the corollary that the witnesses had access to this record. The Bureau has not responded to the main proposition nor to its corollary. But we know, as a fact, that the Bureau has granted this elementary courtesy to United States citizens.

The July 27 Memorandum also asked what is the genuine FBI policy and practice and advised the Bureau that "[e]ach client has to be informed accurately about FBI policy and procedure before he can decide what conditions, if any, to attach." (Page 13-14 & n.2) We are still waiting for an answer. Merely telling us what safeguards you will allow our clients in this matter will not do when you do not declare what you have bestowed on other voluntary

witnesses and do not deny that some have been favored more generously.

### B. The Search for the Truth

The July 27 Memorandum questioned the necessity for reliance upon "the one-sided and unscientific FBI Form FD-302 (Report of Interview) technique . . . " (Page 1-2) The Bureau has now recognized the desirability of transcripts. But the procedure proposed remains less than scientific.

Employing a court reporter serves the goal of searching for the truth. But the Bureau needs to stick with the rationale of the procedure. The witness and his counsel have to inspect the transcript while their memories are fresh from the interview. This is why stenographic notes of a deposition are typed up promptly and shown to the witness for reading and signing.

Prompt review assures that the content is accurate. That is, this scrutiny is required to assure that the record is complete and verbatim and, most importantly, that the quest for the truth is being served. Here are the issues:

- The court reporter's shorthand or stenographic notes must be a true and correct account of what was said. Did the court reporter get it down right?
- The typist's transcript must be a faithful transcription of the notes.

- The interpreter's translation of an English language question must be reliable. Did the translator capture the thought?
- The interpreter's translation of an answer into English must also be reliable.
- The witness's understanding of what the examiner wants to know must be clear. When an interview is beset by language and cultural differences, there is plenty of room for confusion.
- The witness's response must accurately articulate his knowledge.
- Errors must be corrected.

Experience teaches that these objectives can only be achieved when the parties study the transcript as soon as possible after the interview or deposition. <u>In re Russo</u>, 53 F.R.D. 564, 571-72 (C.D. Cal. 1971).

Parenthetically, your letter states that grand jury transcripts are not provided to the witness or to the witness's counsel for retention or review. (Page 2) This is true, as far as it goes.

The practice has created many problems. So, when a witness moves for production of a transcript of his grand jury testimony, courts are now likely to grant the motion. E.g., In re Sealed Motion, 880 F.2d 1367 (D.C. Cir. 1989); In re Heimerle, 788 F.

Supp. 700 (E.D.N.Y. 1992). The Memorandum cited this caselaw. (Page 15)

Putting aside the special case of grand jury practice, it is likely that most federal agencies would allow a witness to have a transcript of what he said. Under the Administrative Procedure Act a person compalled to testify before an agency of a representative thereof is entitled to procure a transcript of his testimony "except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. § 555(c). This right to a transcript applies even to purely investigatory proceedings conducted for factfinding purposes. E.g., In re Neil, 209 F. Supp. 76 (D. W.Va. 1962) (IRS investigation; the APA requires the federal agency conducting the inquiry to furnish each witness summonsed with a copy of the transcript of his own testimony; the refusal of a witness to sign the original transcript does not constitute good cause for denying him a copy); see also Mott v, McMahon, 214 F. Supp. 20 (N.D. Cal. 1963) (IRS investigation of tax liability and possible fraud; a witness summonsed to testify cannot be made to depend upon the federal agency for obtaining a transcript; and, specifically, the witness is entitled to have his own court reporter present taking down the proceedings). If witnesses compelled by federal agencies to testify always have a right to inspect the transcript and usually have a right to procure a copy, why should a voluntary witness be treated worse?

e: Bertin/Baillergeau murder investigation Page 14

## C. Protection against Defamation

The FBI has overlooked the one-sided nature of the procedure it proposes. Why should a witness's own words be kept a secret from him? How can a client refute false claims about his testimony?

Certain elements of the news media covering Haiti are irresponsible. Mr. McGuirk's July 27, 1995, letter to Deputy Assistant Director Perry pointed out the problem. (Page 2) The accompanying Memorandum spelled out this concern. (Pages 2-3, 8-11, 12)

To illustrate the danger, consider the June 21-28, 1995, issue of the <u>Haiti-Observateur</u>. In an article headlined "The Bertin Affair" the <u>Observateur</u> declared that the FBI report on the investigation had been prepared but not made public yet. The story reported as fact that more than four members of the "Lavalas regime" were involved and the FBI had concluded that the crime is an "official assassination." All of this, of course, is arrant nonsense.

What if the <u>Observateur</u> next reports falsely that one of our clients confessed to the FBI that he assassinated Madame Bertin? Or that he accused some innocent person of doing it? A witness who voluntarily cooperates with law enforcement and gives it the benefit of his statement should be entitled to point to that statement to protect his reputation.

In sum, we ask the FBI to grant a simple courtery it has extended to witnesses in the United States; to pursue the search for truth to its logical conclusion; and to let each witness have access to his own statement. Granting the services of a court reporter but denying a copy of the transcript seems like another minstance of keeping the word of promise to the ear and breaking it to the hope. United States v. Nugent, 346 U.S. 1, 10, 13 (1953)

### CONCLUSION

Your August 16, 1995, letter has placed a cloud on counsels' representation of the witnesses. We urge full disclosure by the Bureau so we can remove the cloud or remove counsel.

After this, we can reach the secret transcript issue. If we remain as counsel in the matter, we would like to tell our clients some good news: that the Bureau will not take their statements without giving them a record to rely upon.

We were ready to start the interviews in July When we ran into the Bureau's resistance to transcripts. We will consult with our clients as soon as the agency has responded to the ethics problem and reconsidered its resistance to sharing the transcripts. We await your reply.

Enclosures
cc: Hme. Jean-Joseph Exume
 James McGuirk
 Jean Baptiste Pierre-Cadet
 Ira J. Kurzban
 Burton V. Wides

(Frankfurter, J., dissenting).

### CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

# PREAMBLE: A LAWYER'S RESPONSIBILITIES

A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an intermediary between clients, a lawyer seeks to reconcile their interests as an adviser and, to a limited extent, as a spokesperson for each client. A lawyer acts as an evaluator by examining a client's legal affairs and reporting about them to the client or to others.

In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or by law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectibude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, the administration of justice, and the

quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to atrengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and aometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of t. lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct and in substantive and procedural law. A lawyer is also guided by versonal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Zealous advocacy is not inconsistent with justice. Moreover, unless violations of law or injury to another or another's property is involved, preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the practice of law conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional

and moral judgment guided by the basic principles underlying the rules.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse to legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

### Scope:

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms of "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The comments are intended only as guides to interpretation, whereas the text of each rule is authoritative. Thus, comments, even when they use the term "should," do not add obligations to the rules but merely provide guidance for practicing in compliance with the rules.

The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical

considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under rule 4-1.6, which may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a clientlawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary ary process. The rules pesuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

Violation of a rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such duty.

Moreover, these rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are ordinarily entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. In exceptional situations, the rules might allow or require the lawyer to disclose a client confi

dence. This, however, does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

The lawyer's exercise of discretion not to disclose information under rule 4-1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

### Terminology:

"Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Firm" or "law firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization, and lawyers employed in a legal services organization. See comment, rule 4-1.10. "Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the State of Florida.

"Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.

"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

### RULE 4-1.7 CONFLICT OF INTEREST; GENERAL RULE

- (a) Representing Adverse Interests. A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless;
- (1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and
  - (2) each client consents after consultation.
- (b) Duty to Avoid Limitation on Independent Professional Judgment. A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless:
- the lawyer reasonably believes the representation will not be adversely affected; and
  - (2) the client consents after consultation.
- (c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
- (d) Lawyers Related by Blood or Marriage. A lawyer related to another lawyer as parent, child, sloling, or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer axcept upon consent by the ellent after consultation regarding the relationship.

Amended July 23, 1992, affective Jan 1, 1993 (605 So 2d 252).

### Comment

Loyalty to a dient

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the

representation should be decimed. If such a conflict arises after representation has been undertaken, the lawyer should will-draw from the representation. See rule 4-1.18. Where more than I client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by rule 4-1.9. See also rule 4-2%(c). As to whether a client-lawyer relationship exists or, having ones been relabilished, is continuing, see comment to rule 4-13 and scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverts to that client's or another client's interests without the affected clients consent. Subdivision (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic entarprises, does not require consent of the respective clients Subdivision (a) applies only when the representation of 1 client would be directly adverse to the other and where the lawyer's responsibilities of loyalty and confidentiality of the other lent might be compromised.

Lovally to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of setion for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Subdivision (5) addresses such situations. A possible conflict does not itself preclude the symmetration. The critical quastions are the likelihood that a conflict will evantuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that responsibly should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

### Consultation and consent

A client may consent to representation norwithstanding a conflict. However, as indicated in subdivision (a)(1) with respect to representation directly adverse to a client and subdivision (b)(1) with respect to material limitations on representation of a client when a disinterested leavyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than 1 client is irrolved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and 1 of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

### Lawyer's interests

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that example be handled compotently and at a reasonable fee. See rules 4-1, and 4-1,5. If the profity of a lawyer's own conduct to a transaction is insertious question, it may be difficult or impossible for the lawyer to give a client desched adrine. A lawyer may not

allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in litigation

Subdivision (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or codefeedanta, is governed by subdivisions (b) and (c). An impermissible conflict may exist by reason of substantial discrepancy in the partics' testimony, incumpathishing in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement or the calms or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The pertential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should define to represent more than 1 co-distendant. On the other hand, combion representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of subdivision (t) are met. Compare rule 4-22 involving Insurmediation between effects.

Ordinarily, a Iswyer may not set as advocate against a clean the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circurastances in which a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the emergrate in an unrelated matter if doing so will not advorsely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients concern upon conscipitation. By the same token, government lawyers in some circuratances may represent government employees in proceedings in which a government agency is the opposing party. The property of concurrent representation can depend on the nature of the litigation. For example, a suit for a declaratory judgment concerning statutory interpresent

A lawyer may represent parties having antagonistic positions on a legal question that has arraen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

### interset of person paying for a lawyer's service

A larger may be paid from a source other than the circle the client is informed of that fact and consents and the arrangement does not compromise the larger's duty of loyalty to the client. See rule 4-120, For example, when an insurer and its insured have conflicting interests in a insister arising from a liability insurance agreement and the insurer arising from a liability insurance agreement and the insurer is required to provide special nonnel for the insured, the arrangement should assure the special counself professional independence. So also, when a comprotion and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the chents consent after consultation and the arrangement ensures the largerity professional independence independence.

### Other conflict situations

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse office include

the duration and intimacy of the lawyer's relationship with the client or clients involved the functions being performed by the lawyer, the likehood that setual conflict well arise, and the likely prejudies to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonatic to each other, but common representation is permissible where the clients are generally abgred in interest eventuogh there is some difference of interest arong them.

Conflict questions may also arise in setate planning and estate administration. A lawyer may be called upon to improve well for several family members, such as hasband and wife, and, depending upon the circumstances, a conflict of interest may mixe. In estate administration the dented of the client may be unclear under the law of some jurisdictions. In Florida, the personal representative is the client rather than the estate or the beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a responsion or other organization who is also a member of its board of directors should determine whether the responsibilities of the 2 roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's realignation from the board, and the possibility of the corporation's obtaining largit advise from another lawyer is such attentions. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer would not serve as a director.

### Conflict charged by an opposing party

Resolving questions of conflict of interest is primarily the respectability of the lawyer undertaking the representation. In ittigation, a court may make the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly make the question. Such an objection should be viewed with caution, however, for it can be musused as a technique of harmanment. See Scope.

### Family relationships between lawyers

Rule 4-1.7(d) applies to related lawyers who are in different firms. Related lawyers in the same firm are also governed by rules 4-1.9 and 4-1.00. The disqualification stated in rule 4-1.7(d) is personal and is not imputed to members of firms with whom the lawyers are associated.

Comment amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

# CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

### PREAMBLE: A LAWYER'S RESPONSIBILITIES

A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special

responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer realously asserts the client's position under the rules of the soversary system. As a negotiator, a lawyer seaks a result advantageous to the client but consistent with requirements of honest dealing with others. As an intermediary between clients, a lawyer seeks to reconale their interests as an adviser and, to a limited extent, as a spokesperson for each client. A lawyer acts as an evaluator by examining a client's legal affairs and reporting about them to the client or to others.

In all professional functions a lawyer should be competent prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client exart so far as disclosure is required or permitted by the Rules of Professional Conduct or by law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawer should use the law's procedures only for legitinate purposes and not to horass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges. While it is a wher lawyers, and public officials. keyer's duty, when necessary, to challenge the rectiaxe of official action, it is also a lawyer's duty to aphold legal process.

As a public citizen, a lawyer should seek improve-ment of the law, the administration of justice, and the

quality of service rendered by the legal profession As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law. and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and dvic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest

Many of the lawyer's professional responsibilities are presented in the Rules of Professional Conduct and in substantive and procedural law. A lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Zealeus advocacy is not inconsistent with justice. Morcover, unless violations of isw or injury to another or another's property is involved, preserving client confidences ordinarily serves the public interest because people are more Ekely to seek legal advice, and thereby beed their legal obligations, when they know their communica-

In the practice of law conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict hetween a lawyer's responsibility to a client and the lawyer's own sense of personal bonor, including obligations to society and the legal profession. The Rules of Professional Conduct pre-Within the scribe terms for resolving such conflicts. framework of these rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional

and moral judgment guided by the basic principles underlying the rules.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that cooten, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independence legal profession is an important force in preceiving government under law, for abuse to legal authority is more readily challenged by a profession whose members are not dependent on the exacutive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the fudiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Roles of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Negloct of those responsibilities compromises the independence of the profession and the public interest that it serves.

#### Scope

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms of "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional rule.

The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The comments are intended only as guides to interpretation, whereas the text of each rule is authoritative. Thus, comments, even when they use the term should, do not add obligations to the rules but merely provide guidance for practicing in compliance with the rules.

The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and othlesi

considerations that should inform a lawyer, for ne worthwhile human activity can be completely defined by logal rules. The rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of subtrantive law external to these rules determine whether a client-lawyer relationship axists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under rule 4-1.6, which may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a clientlawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the intustion. Moreover, the rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

Violation of a rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil lishility. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-sassasment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antigonist in a collateral proceeding or transaction has standing to asek enforcement of the rule. Accordingly, nothing in the rules should be deemed to sugment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such duty.

Moreover, these rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with lew and fairness in litigation. In reliance on the attorney-client privilege, clients are ordinarily entitled to expect that communications within the scope of the privilege will be protected against compalled disclosure. The attorney-client privilege is that of the client and not of the lawyer. In exceptional situations, the rules might allow or require the lawyer to dischase a glient confi-

dence. This, however, does not vitiate the proposition that as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

The lawyer's exercise of discretion not to disclose information under rule 4-1.6 should not be subject to recommination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

### Terminology:

"Ballet" or "believes" danotes that the person involved actually supposed the fact in question to be trus. A person's belief may be inferred from dreumstances.

"Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Firm" or "law firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization, and lawyers employed in a legal services organization. See comment, rule 4-1.10. "Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the State of Florida.

"Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.

"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

Amended July 23, 1992, effective Jan. 1, 1993 (605 Su.2d 252).

LAW OFFICES

# JAMES McGuirk, P. A.

201 ALHAMBRA CIRCLE SUITE 711

CORAL GABLES, FLORIDA 83134

TELEPHONE (305) 445-8771 FACSIMILE (305) 445-9565

JAMES MCQUIRK GREGG T TOUNG OF COUNSEL

September 8, 1995

William E. Perry Deputy Assistant Director Federal Bureau of Investigation 10th & Pennsylvania Avenues, NW Washington, DC 20535

RE: Haiti investigation

Dear Mr. Perry:

Please find enclosed a courtesy copy of a letter from me to Associate Special Agent in Charge Paul E. Mallet of the Federal Bureau of Investigation dated September 1, 1995 and a memorandum from Joseph Beeler to to Associate Special Agent in Charge Paul E. Mallet of the Federal Bureau of Investigation dated September 6, 1995.

You will recall that this involves the Bureau's proposed interviews of Haitian government employees in the investigation agreed to by the governments of Haiti and the United States.

The purpose of this is to continue to keep you informed. The enclosed letter and memorandum respond to a letter from Mr. Mallet dated August 16, 1995 (copy enclosed) stating that a court reporter would be permitted, but that a right to correct and have access to the transcripts would not. Mr. Mallet also raised the question of whether representation of more than one client would constitute a conflict of interest.

Yours sincerely,

A M

### **MEMORANDUM**

TO: Paul E. Mallett

Associate Special Agent in Charge

FROM: Joseph Beeler

DATE: September 6, 1995

RE: Bertin/Baillergeau murder investigation in Haiti

#### INTRODUCTION

We are pleased that the Federal Bureau of Investigation has recognized the desirability of having a transcript of the interviews. This is progress.

More is needed. In your August 16, 1995, letter written "[0]n behalf of the FBI" to James McGuirk you reply to a July 27, 1995, letter from Mr. McGuirk to Deputy Assistant Director William E. Perry and a Memorandum of the same date from me (Joseph Beeler) to Mr. Perry. Unfortunately, your letter raises a new problem, belatedly suggesting that we, as counsel for the witnesses, labor under a conflict of interest; and overlooks much of what we said about the necessity of a witness to have a copy of his interview transcript. Let us explain.

#### I. THE BUREAU'S CONFLICT OF INTEREST CLAIM

Your August 16 letter declares that the FBI "cannot concur a priori with your assertion that you could ethically represent all 15 individuals." (Page 1) Actually, Mr. McGuirk's letter simply stated that a team of attorneys represented all 15 individuals named in the June 28, 1995, letter from Supervisory Special Agent Richard J. Giannotti to Minister of Justice Jean-Joseph Exume. Neither Mr. McGuirk's letter nor my Memorandum made any assertions

about ethics. Thus, it is your letter that has raised the conflict of interest issue, a hurdle that we thought had been crossed when our clients accepted us as counsel.

In essence, you seem to have interjected a claim that we, as counsel for the witnesses, are acting unethically. This requires us to inform our clients of your concerns; meet with them, again, to discuss the representation; and revisit the choice of counsel questions.

#### A. The Law Regulating Conflicts of Interest

We may not understand the Bureau's claim. Are you saying that Mr. McGuirk cannot ethically represent all of his clients simply because of potential conflicts of interest? Or are you aware of facts indicating actual conflicts of interest? Or are you saying that in a criminal investigation the law presumes that there is an irreconcilable conflict of interest whenever more than one witness chooses to be represented by the same lawyer? Or that there is some number of clients beyond which multiple representation is impermissible? Please enlighten us.

Meanwhile, we will attempt to explain our understanding of the law and practice governing conflicts of interest. The canons, codes or rules of ethics in every American jurisdiction allow multiple representation. Moreover, it is not unusual for one lawyer to represent more than one client in the same investigation. The lawyer must be careful, of course, that no client's individual interests are sacrificed. We have been alert to this

responsibility and do not know of any actual conflict. (For your convenience, we have enclosed a copy of Rule 4-1.7 of the Florida Rules of Professional Conduct and the official Comments accompanying the rule. The Florida rule and comments are based upon the American Bar Association Model Rules of Professional Conduct. The Florida ethics rules have been adopted by federal courts in Florida. E.g., S.D. Fla. L.R. 11.1.C. The ABA Model Rules have, of course, been adopted by other state and federal courts throughout the United States.)

There is no ethics rule based upon the number of clients represented. Your letter cites no authority for its "a priori" theory, and the courts have rejected such an approach. E.g., In re Investigation Before April 1975 Grand Jury, 531 F.2d 600 (D.C. Cir. 1976) (in federal grand jury investigation, court of appeals rejects prosecutor's bald argument that a lawyer had a blatant conflict of interest by simultaneously representing 21 newspaper pressmen plus their union president and vacates order requiring each to retain separate counsel); In re Special Grand Jury, 480 F. Supp. 174 (E.D. Wis. 1979) (in federal grand jury investigation, court refuses to disqualify law firm that was simultaneously representing 23 present and former employees of the Miller Brewing Company, even though the legal fees were being paid by the corporation); Matter of Grand Jury Empaneled, January 21, 1975, 536 (3d Cir. 1976) (court of appeals disqualification of lawyer who was simultaneously representing nine

officers and employees of the National Maritime Union, even though each of the nine witnesses invoked the protection of the Fifth Amendment and refused to testify before the grand jury); SEC v. Csapo, 533 F.2d 7 (D.C. Cir. 1976) (in a formal SEC investigation of insider misconduct, court of appeals refuses to curtail attorneys who were simultaneously representing nine witnesses, even though three of these clients were principal targets of the investigation and two of these pleaded the Fifth Amendment); Matter of Special February 1977 Grand Jury, 581 F.2d 1262 (7th Cir. 1978) (court of appeals declines to order disqualification of an attorney who simultaneously represented multiple grand jury witnesses, even though two of these clients had been immunized).

Speaking generally of the simultaneous representation of a corporation and/or its officers and employees, commentators have concluded that "[t]he approaches of the courts vary, especially when grand jury proceedings are involved, but no hard and fast rule precludes such multiple representation." Samuel R. Miller & Irwin H. Warren, "Conflicts of Interest and Ethical Issues for the Inside and Outside Counsel", Chap. 9 in Section of Litigation, American Bar Association, The Corporate Litigator 145 (1989) (endnote deleted). Similarly, legal scholars—indeed, ones who have served with the Office of the Solicitor General—have found that "in the federal courts there is no bright line standard for assessing the propriety of representing multiple witnesses or for evaluating

other potential conflicts of interest." Sara Sun Beale & William C. Bryson, 1 Grand Jury Law and Practice § 6:20, at p. 110 (1986).

The standard is refined, not crude. It demands that the lawyer look below the surface and weigh the facts. McAlinden v. Wiggins, 543 F. Supp. 1004, 1006 (S.D.N.Y. 1982) ("Although plaintiff vehemently asserts that the inherent conflicts in this joint counsel arrangement mandate [the lawyer's] automatic disqualification, each case must be independently reviewed on its facts to determine if the severe remedy of disqualification is merited.")

In short, there is no rule of thumb for tossing lawyers out of a case and stranding their clients. This, we believe, is basic law.

#### B. Other Problems with the Bureau's Claim

You should recognize that the Bureau can only have a limited role in asserting a conflict of interest against counsel for the witnesses. Ordinarily, multiple representation is a matter to be decided by the lawyer and the clients without supervision by executive branch agencies. See "Preamble: A Lawyer's Responsibilities," Florida Rules of Professional Conduct. (A copy of this Preamble is enclosed too.) The rules of ethics teach that when a conflict is charged by an opposing party, the "objection should be viewed with caution, however, for it can be misused as a technique of harassment." Comment to Rule 4-1.7, Florida Rules of Professional Conduct; Preamble, supra; accord Weaver v. Millard,

819 P.2d 110 (Ida. App. 1991) (rules of ethics serve as a guide for lawyering; they are not intended to be used as procedural weapons; assertions of conflict by an opposing party should be viewed with caution).

You should also realize that the Bureau's timing does not help the situation. Why did the FBI wait more than a month after it knew of the multiple representation to raise an objection? On July 4, 1995, Mr. McGuirk telephoned the FBI in Port-au-Prince on behalf of one client. On July 5 he called again on behalf of another client. On July 6 he called on behalf of three more. On July 10 Mr. McGuirk faxed a letter to Supervisory Special Agent Giannotti listing 13 witnesses he was representing. (That list, of course, has been supplemented.)

When we, the three lawyers for the witnesses, met with the three representatives of the Bureau in Port-au-Prince on July 13, 1995, we volunteered that we were sensitive to the potential for conflict of interest, and we explained that we were proceeding carefully and cautiously. In the Bureau's July 14 letter to James McGuirk, FBI Chief Division Counsel Edwin H. Boldt, who had attended the meeting, addressed a number of issues discussed there but did not complain that counsel for the witnesses were laboring under any potential conflict of interest.

Given this history, it is surprising, to say the least, that the FBI would raise a conflict of interest objection for the first time in an August 16 letter.

Moreover, the Bureau's solution is problematical, to say the least. The FBI (1) claims a conflict of interest problem, then (2) insists that regardless of it we proceed to counsel our clients about important decisions and represent them at interviews, and (3) adds that the FBI will deal with the issue after each client has made his decision and given an interview represented by supposedly conflicted counsel. (Page 1) In the same paragraph the letter declares it is highly likely "that proceeding on this basis might compromise the FBI's investigative efforts and/or taint the work-product of the investigation under Haitian law." (Page 1)

Our clients do not want a flawed investigation nor a tainted result. They want the killers identified and the murders stopped.

#### C. Resolving the Issue

Conflict of interest issues must be addressed at the threshold. See Redd v. Shell Oil Co., 518 F.2d 311 (10th Cir. 1975). Further, "legal ethics are pragmatic and to be applied where real, not speculative harm is involved." Reddick v. Summit House, Inc., 835 F. Supp. 137, 146 (S.D.N.Y. 1993). So that the question can be resolved responsibly, the Bureau should disclose all the facts from which it deduces we are disabled by an unethical conflict of interest. Please inform us of the following:

 What facts suggest a conflict of interest? As the case law demonstrates, conflict and disqualification decisions must be based on facts.

- 2. Which clients have interests that are in conflict with the interest of other clients? Your letter asserts, "It is highly likely that conflicts of interest will develop such that you could not fairly represent the individual interests of all fifteen persons ..." (Page 1) You need to divulge facts that are so likely to develop into a conflict of interest and to specify which client may be injured.
- 3. If we proceed on the basis of multiple representation as planned, precisely how will this "compromise the FBI's investigative efforts," as you forecast? (Page 1) Do you have anything specific in mind?
- 4. If we proceed on the basis of multiple representation, precisely how will this "taint the work-product of the investigation under Haitian law," as you predict? (Page 1) Do you have a legal opinion available that we can review with our Haitian counsel?
- 5. Our clients, as law enforcement officers, would like to share with the Bureau how they believe the crimes should be investigated. Nonetheless, as their counsel, we are now obliged to ask the usual questions. As to each client, is he a "subject" of the investigation? Is he a "target" of the investigation? These questions are routinely asked and answered in federal investigations. Indeed, there is "longstanding internal practice" of the Department of Justice to warn grand jury witnesses if they are targets or subjects

of an investigation and to advise them of their rights. <u>See</u> United States Attorneys' Manual 9-11.150.

- 6. To assist us further in resolving the Bureau's claim, are you able to furnish us any prior statements attributed to any of our clients? We will use this information to advise each client intelligently whether there is an arguable conflict of interest and to discuss whether he ought to waive it.
- 7. How, exactly, does the Bureau propose to "review the matter following each interview"? (Page 1) What procedure does the Bureau have in mind? What standard will be applied? Who will decide any disagreements that may result?
- 8. In the Bureau's view, how many witnesses can a lawyer represent without being a priori conflicted?

In conclusion, you have put us on general notice of a conflict of interest contention. You have further suggested the problem might be resolved later, at some risk. We feel obliged to request the basis for your contention and to address the obstacle immediately.

#### II. THE DIFFICULTIES OF SECRET TRANSCRIPTS

When we meet with our clients to discuss the Bureau's conflict of interest claim, we would like to tell them that the FBI will let each one see what the court reporter has taken down as his statement and let his counsel retain a copy. Thus we ask the FBI

to reconsider its pronouncement to Mr. McGuirk that "copies [of transcripts] will not be provided to you or your client(s) for retention or review." (Page 2) That is a proposal that no lawyer worth his salt could recommend to a client.

#### A. The Pursuit of Equality

Frankly, we do not understand why the Bureau insists upon second-class treatment of our clients. In my July 27, 1995, Memorandum to William E. Perry I stated that in history and practice the FBI has permitted an exact record to be made of interviews by its agents when the witness made accurate recording a condition for granting any interview. (Page 13) Our assertion that the FBI has, upon demand, permitted an exact record to be made of voluntary interviews carries with it the corollary that the witnesses had access to this record. The Bureau has not responded to the main proposition nor to its corollary. But we know, as a fact, that the Bureau has granted this elementary courtesy to United States citizens.

The July 27 Memorandum also asked what is the genuine FBI policy and practice and advised the Bureau that "[e]ach client has to be informed accurately about FBI policy and procedure before he can decide what conditions, if any, to attach." (Page 13-14 & n.2) We are still waiting for an answer. Merely telling us what safeguards you will allow our clients in this matter will not do when you do not declare what you have bestowed on other voluntary

To: Paul E. Mallett September 6, 1995

Re: Bertin/Baillergeau murder investigation Page 11

witnesses and do not deny that some have been favored more generously.

#### B. The Search for the Truth

The July 27 Memorandum questioned the necessity for reliance upon "the one-sided and unscientific FBI Form FD-302 (Report of Interview) technique . . . " (Page 1-2) The Bureau has now recognized the desirability of transcripts. But the procedure proposed remains less than scientific.

Employing a court reporter serves the goal of searching for the truth. But the Bureau needs to stick with the rationale of the procedure. The witness and his counsel have to inspect the transcript while their memories are fresh from the interview. This is why stenographic notes of a deposition are typed up promptly and shown to the witness for reading and signing.

Prompt review assures that the content is accurate. That is, this scrutiny is required to assure that the record is complete and verbatim and, most importantly, that the quest for the truth is being served. Here are the issues:

- The court reporter's shorthand or stenographic notes must be a true and correct account of what was said. Did the court reporter get it down right?
- The typist's transcript must be a faithful transcription of the notes.

 The interpreter's translation of an English language question must be reliable. Did the translator capture the thought?

- The interpreter's translation of an answer into English must also be reliable.
- The witness's understanding of what the examiner wants to know must be clear. When an interview is beset by language and cultural differences, there is plenty of room for confusion.
- The witness's response must accurately articulate his knowledge.
- Errors must be corrected.

Experience teaches that these objectives can only be achieved when the parties study the transcript as soon as possible after the interview or deposition. <u>In re Russo</u>, 53 F.R.D. 564, 571-72 (C.D. Cal. 1971).

Parenthetically, your letter states that grand jury transcripts are not provided to the witness or to the witness's counsel for retention or review. (Page 2) This is true, as far as it goes.

The practice has created many problems. So, when a witness moves for production of a transcript of his grand jury testimony, courts are now likely to grant the motion. <u>E.g.</u>, <u>In re Sealed Motion</u>, 880 F.2d 1367 (D.C. Cir. 1989); <u>In re Heimerle</u>, 788 F.

Supp. 700 (E.D.N.Y. 1992). The Memorandum cited this caselaw. (Page 15)

Putting aside the special case of grand jury practice, it is likely that most federal agencies would allow a witness to have a transcript of what he said. Under the Administrative Procedure Act a person compelled to testify before an agency or a representative thereof is entitled to procure a transcript of his testimony "except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. § 555(c). This right to a transcript applies even to purely investigatory proceedings conducted for factfinding purposes. E.g., In re Neil, 209 F. Supp. 76 (D. W.Va. 1962) (IRS investigation; the APA requires the federal agency conducting the inquiry to furnish each witness summonsed with a copy of the transcript of his own testimony; the refusal of a witness to sign the original transcript does not constitute good cause for denying him a copy); see also Mott v. McMahon, 214 F. Supp. 20 (N.D. Cal. 1963) (IRS investigation of tax liability and possible fraud; a witness summonsed to testify cannot be made to depend upon the federal agency for obtaining a transcript; and, specifically, the witness is entitled to have his own court reporter present taking down the proceedings). If witnesses compelled by federal agencies to testify always have a right to inspect the transcript and usually have a right to procure a copy, why should a voluntary witness be treated worse?

#### C. Protection against Defamation

The FBI has overlooked the one-sided nature of the procedure it proposes. Why should a witness's own words be kept a secret from him? How can a client refute false claims about his testimony?

Certain elements of the news media covering Haiti are irresponsible. Mr. McGuirk's July 27, 1995, letter to Deputy Assistant Director Perry pointed out the problem. (Page 2) The accompanying memorandum spelled out this concern. (Pages 2-3, 8-11, 12)

To illustrate the danger, consider the June 21-28, 1995, issue of the <u>Haiti-Observateur</u>. In an article headlined "The Bertin Affair" the <u>Observateur</u> declared that the FBI report on the investigation had been prepared but not made public yet. The story reported as fact that more than four members of the "Lavalas regime" were involved and the FBI had concluded that the crime is an "official assassination." All of this, of course, is arrant nonsense.

What if the <u>Observateur</u> next reports falsely that one of our clients confessed to the FBI that he assassinated Madame Bertin? Or that he accused some innocent person of doing it? A witness who voluntarily cooperates with law enforcement and gives it the benefit of his statement should be entitled to point to that statement to protect his reputation.

To: Paul E. Mallett September 6, 1995

Re: Bertin/Baillergeau murder investigation Page 15

In sum, we ask the FBI to grant a simple courtesy it has extended to witnesses in the United States; to pursue the search for truth to its logical conclusion; and to let each witness have access to his own statement. Granting the services of a court reporter but denying a copy of the transcript seems like another "instance of keeping the word of promise to the ear and breaking it to the hope." United States v. Nugent, 346 U.S. 1, 10, 13 (1953) (Frankfurter, J., dissenting).

#### CONCLUSION

Your August 16, 1995, letter has placed a cloud on counsels' representation of the witnesses. We urge full disclosure by the Bureau so we can remove the cloud or remove counsel.

After this, we can reach the secret transcript issue. If we remain as counsel in the matter, we would like to tell our clients some good news: that the Bureau will not take their statements without giving them a record to rely upon.

We were ready to start the interviews in July when we ran into the Bureau's resistance to transcripts. We will consult with our clients as soon as the agency has responded to the ethics problem and reconsidered its resistance to sharing the transcripts. We await your reply.

Enclosures

cc: Hme. Jean-Joseph Exume James McGuirk Jean Baptiste Pierre-Cadet Ira J. Kurzban Burton V. Wides

#### RULE 4-1.7 CONFLICT OF INTEREST; GENERAL RULE

- (a)-Representing Adverse Interests. A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless:
- (1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and
  - (2) each client consents after consultation.
- (b) Duty to Avoid Limitation on Independent Professional Judgment. A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless:
- (1) the lawyer reasonably believes the representation will not be adversely affected; and
  - (2) the client consents after consultation.
- (c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
- (d) Lawyers Related by Blood or Marriage. A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

#### Comment

Loyalty to a client

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See rule 4-1.16. Where more than 1 client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by rule 4-1.9. See also rule 4-22(c). As to whether a client-lawyer relationship exists or, having once been established, is continuing, see comment to rule 4-1.3 and scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client's or another client's interests without the affected client's consent. Subdivision (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Subdivision (a) applies only when the representation of 1 client would be directly adverse to the other and where the lawyer's responsibilities of loyalty and confidentiality of the other client might be compromised.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Subdivision (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasenably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

#### Consultation and consent

A client may consent to representation notwithstanding a conflict. However, as indicated in subdivision (a)(1) with respect to representation directly adverse to a client and subdivision (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than 1 client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and 1 of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

#### Lawyer's interests

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See rules 4-1.1 and 4-15. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not

allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

#### Conflicts in litigation

Subdivision (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or codefendants, is governed by subdivisions (b) and (c). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than 1 co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of subdivision (b) are met. Compare rule 4-2.2 involving intermediation between clients.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

#### Interest of person paying for a lawyer's service

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See rule 4-1.8(D. For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.

#### Other conflict situations

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise, and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the "ent may be unclear under the law of some jurisdictions. In Florida, the personal representative is the client rather than the estate or the beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the 2 roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

#### Conflict charged by an opposing party

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See Scope.

#### Family relationships between lawyers

Rule 4-1.7(d) applies to related lawyers who are in different firms. Related lawyers in the same firm are also governed by rules 4-1.9 and 4-1.10. The disqualification stated in rule 4-1.7(d) is personal and is not imputed to members of firms with whom the lawyers are associated.

Comment amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

LAW OFFICES

JAMES MCGUIRR, P. A.

SUITE 711 CORAL GABLES, FLORIDA 33134

> TELEPHONE (305) 445-877( FACSIMILE (305) 445-9866

JAMES MCGUIRK

OF COUNSEL PAUL F. PENICHET

September 8, 1995

Seth Waxman Associate Deputy Attorney General Department of Justice, Room 4208 10th & Constitution Avenues, NW Washington, DC 20530

RE: Haiti investigation

Dear Mr. Waxman:

Please find enclosed a courtesy copy of a letter from me to Associate Special Agent in Charge Paul E. Mallet of the Federal Bureau of Investigation dated September 1, 1995 and a memorandum from Joseph Beeler to to Associate Special Agent in Charge Paul E. Mallet of the Federal Bureau of Investigation dated September 6, 1995.

You will recall that this involves the Bureau's proposed interviews of Haitian government employees in the investigation agreed to by the governments of Haiti and the United States.

The purpose of this is to continue to keep you informed. The enclosed letter and memorandum respond to a letter from Mr. Mallet dated August 16, 1995 (copy enclosed) stating that a court reporter would be permitted, but that a right to correct and have access to the transcripts would not. Mr. Mallet also raised the question of whether representation of more than one client would constitute a conflict of interest.

Yours sincerely,

7 111

### **MEMORANDUM**

TO: Paul E. Mallett

Associate Special Agent in Charge

FROM: Joseph Beeler

DATE: September 6, 1995

RE: Bertin/Baillergeau murder investigation in Haiti

#### INTRODUCTION

We are pleased that the Federal Bureau of Investigation has recognized the desirability of having a transcript of the interviews. This is progress.

More is needed. In your August 16, 1995, letter written "[0]n behalf of the FBI" to James McGuirk you reply to a July 27, 1995, letter from Mr. McGuirk to Deputy Assistant Director William E. Perry and a Memorandum of the same date from me (Joseph Beeler) to Mr. Perry. Unfortunately, your letter raises a new problem, belatedly suggesting that we, as counsel for the witnesses, labor under a conflict of interest; and overlooks much of what we said about the necessity of a witness to have a copy of his interview transcript. Let us explain.

#### I. THE BUREAU'S CONFLICT OF INTEREST CLAIM

Your August 16 letter declares that the FBI "cannot concur a priori with your assertion that you could ethically represent all 15 individuals." (Page 1) Actually, Mr. McGuirk's letter simply stated that a team of attorneys represented all 15 individuals named in the June 28, 1995, letter from Supervisory Special Agent Richard J. Giannotti to Minister of Justice Jean-Joseph Exume. Neither Mr. McGuirk's letter nor my Memorandum made any assertions

about ethics. Thus, it is your letter that has raised the conflict of interest issue, a hurdle that we thought had been crossed when our clients accepted us as counsel.

In essence, you seem to have interjected a claim that we, as counsel for the witnesses, are acting unethically. This requires us to inform our clients of your concerns; meet with them, again, to discuss the representation; and revisit the choice of counsel questions.

#### A. The Law Regulating Conflicts of Interest

We may not understand the Bureau's claim. Are you saying that Mr. McGuirk cannot ethically represent all of his clients simply because of potential conflicts of interest? Or are you aware of facts indicating actual conflicts of interest? Or are you saying that in a criminal investigation the law presumes that there is an irreconcilable conflict of interest whenever more than one witness chooses to be represented by the same lawyer? Or that there is some number of clients beyond which multiple representation is impermissible? Please enlighten us.

Meanwhile, we will attempt to explain our understanding of the law and practice governing conflicts of interest. The canons, codes or rules of ethics in every American jurisdiction allow multiple representation. Moreover, it is not unusual for one lawyer to represent more than one client in the same investigation. The lawyer must be careful, of course, that no client's individual interests are sacrificed. We have been alert to this

responsibility and do not know of any actual conflict. (For your convenience, we have enclosed a copy of Rule 4-1.7 of the Florida Rules of Professional Conduct and the official Comments accompanying the rule. The Florida rule and comments are based upon the American Bar Association Model Rules of Professional Conduct. The Florida ethics rules have been adopted by federal courts in Florida. E.g., S.D. Fla. L.R. 11.1.C. The ABA Model Rules have, of course, been adopted by other state and federal courts throughout the United States.)

There is no ethics rule based upon the number of clients represented. Your letter cites no authority for its "a priori" theory, and the courts have rejected such an approach. E.g., In re Investigation Before April 1975 Grand Jury, 531 F.2d 600 (D.C. Cir. 1976) (in federal grand jury investigation, court of appeals rejects prosecutor's bald argument that a lawyer had a blatant conflict of interest by simultaneously representing 21 newspaper pressmen plus their union president and vacates order requiring each to retain separate counsel); In re Special Grand Jury, 480 F. Supp. 174 (E.D. Wis. 1979) (in federal grand jury investigation, court refuses to disqualify law firm that was simultaneously representing 23 present and former employees of the Miller Brewing Company, even though the legal fees were being paid by the corporation); Matter of Grand Jury Empaneled, January 21, 1975, 536 (3d Cir. 1976) (court of appeals reverses disqualification of lawyer who was simultaneously representing nine

officers and employees of the National Maritime Union, even though each of the nine witnesses invoked the protection of the Fifth Amendment and refused to testify before the grand jury); SEC v. Csapo, 533 F.2d 7 (D.C. Cir. 1976) (in a formal SEC investigation of insider misconduct, court of appeals refuses to curtail attorneys who were simultaneously representing nine witnesses, even though three of these clients were principal targets of the investigation and two of these pleaded the Fifth Amendment); Matter of Special February 1977 Grand Jury, 581 F.2d 1262 (7th Cir. 1978) (court of appeals declines to order disqualification of an attorney who simultaneously represented multiple grand jury witnesses, even though two of these clients had been immunized).

Speaking generally of the simultaneous representation of a corporation and/or its officers and employees, commentators have concluded that "[t]he approaches of the courts vary, especially when grand jury proceedings are involved, but no hard and fast rule precludes such multiple representation." Samuel R. Miller & Irwin H. Warren, "Conflicts of Interest and Ethical Issues for the Inside and Outside Counsel", Chap. 9 in Section of Litigation, American Bar Association, The Corporate Litigator 145 (1989) (endnote deleted). Similarly, legal scholars—indeed, ones who have served with the Office of the Solicitor General—have found that "in the federal courts there is no bright line standard for assessing the propriety of representing multiple witnesses or for evaluating

other potential conflicts of interest." Sara Sun Beale & William C. Bryson, 1 Grand Jury Law and Practice § 6:20, at p. 110 (1986).

The standard is refined, not crude. It demands that the lawyer look below the surface and weigh the facts. McAlinden v. Wiggins, 543 F. Supp. 1004, 1006 (S.D.N.Y. 1982) ("Although plaintiff vehemently asserts that the inherent conflicts in this joint counsel arrangement mandate [the lawyer's] automatic disqualification, each case must be independently reviewed on its facts to determine if the severe remedy of disqualification is merited.")

In short, there is no rule of thumb for tossing lawyers out of a case and stranding their clients. This, we believe, is basic law.

#### B. Other Problems with the Bureau's Claim

You should recognize that the Bureau can only have a limited role in asserting a conflict of interest against counsel for the witnesses. Ordinarily, multiple representation is a matter to be decided by the lawyer and the clients without supervision by executive branch agencies. See "Preamble: A Lawyer's Responsibilities," Florida Rules of Professional Conduct. (A copy of this Preamble is enclosed too.) The rules of ethics teach that when a conflict is charged by an opposing party, the "objection should be viewed with caution, however, for it can be misused as a technique of harassment." Comment to Rule 4-1.7, Florida Rules of Professional Conduct; Preamble, supra; accord Weaver v. Millard,

819 P.2d 110 (Ida. App. 1991) (rules of ethics serve as a guide for lawyering; they are not intended to be used as procedural weapons; assertions of conflict by an opposing party should be viewed with caution).

You should also realize that the Bureau's timing does not help the situation. Why did the FBI wait more than a month after it knew of the multiple representation to raise an objection? On July 4, 1995, Mr. McGuirk telephoned the FBI in Port-au-Prince on behalf of one client. On July 5 he called again on behalf of another client. On July 6 he called on behalf of three more. On July 10 Mr. McGuirk faxed a letter to Supervisory Special Agent Giannotti listing 13 witnesses he was representing. (That list, of course, has been supplemented.)

When we, the three lawyers for the witnesses, met with the three representatives of the Bureau in Port-au-Prince on July 13, 1995, we volunteered that we were sensitive to the potential for conflict of interest, and we explained that we were proceeding carefully and cautiously. In the Bureau's July 14 letter to James McGuirk, FBI Chief Division Counsel Edwin H. Boldt, who had attended the meeting, addressed a number of issues discussed there but did not complain that counsel for the witnesses were laboring under any potential conflict of interest.

Given this history, it is surprising, to say the least, that the FBI would raise a conflict of interest objection for the first time in an August 16 letter.

Moreover, the Bureau's solution is problematical, to say the least. The FBI (1) claims a conflict of interest problem, then (2) insists that regardless of it we proceed to counsel our clients about important decisions and represent them at interviews, and (3) adds that the FBI will deal with the issue after each client has made his decision and given an interview represented by supposedly conflicted counsel. (Page 1) In the same paragraph the letter declares it is highly likely "that proceeding on this basis might compromise the FBI's investigative efforts and/or taint the work-product of the investigation under Haitian law." (Page 1)

Our clients do not want a flawed investigation nor a tainted result. They want the killers identified and the murders stopped.

#### C. Resolving the Issue

Conflict of interest issues must be addressed at the threshold. See Redd v. Shell Oil Co., 518 F.2d 311 (10th Cir. 1975). Further, "legal ethics are pragmatic and to be applied where real, not speculative harm is involved." Reddick v. Summit House, Inc., 835 F. Supp. 137, 146 (S.D.N.Y. 1993). So that the question can be resolved responsibly, the Bureau should disclose all the facts from which it deduces we are disabled by an unethical conflict of interest. Please inform us of the following:

 What facts suggest a conflict of interest? As the case law demonstrates, conflict and disqualification decisions must be based on facts.

- 2. Which clients have interests that are in conflict with the interest of other clients? Your letter asserts, "It is highly likely that conflicts of interest will develop such that you could not fairly represent the individual interests of all fifteen persons ..." (Page 1) You need to divulge facts that are so likely to develop into a conflict of interest and to specify which client may be injured.
- 3. If we proceed on the basis of multiple representation as planned, precisely how will this "compromise the FBI's investigative efforts," as you forecast? (Page 1) Do you have anything specific in mind?
- 4. If we proceed on the basis of multiple representation, precisely how will this "taint the work-product of the investigation under Haitian law," as you predict? (Page 1) Do you have a legal opinion available that we can review with our Haitian counsel?
- 5. Our clients, as law enforcement officers, would like to share with the Bureau how they believe the crimes should be investigated. Nonetheless, as their counsel, we are now obliged to ask the usual questions. As to each client, is he a "subject" of the investigation? Is he a "target" of the investigation? These questions are routinely asked and answered in federal investigations. Indeed, there is "longstanding internal practice" of the Department of Justice to warn grand jury witnesses if they are targets or subjects

of an investigation and to advise them of their rights. <u>See</u> United States Attorneys' Manual 9-11.150.

- 6. To assist us further in resolving the Bureau's claim, are you able to furnish us any prior statements attributed to any of our clients? We will use this information to advise each client intelligently whether there is an arguable conflict of interest and to discuss whether he ought to waive it.
- 7. How, exactly, does the Bureau propose to "review the matter following each interview"? (Page 1) What procedure does the Bureau have in mind? What standard will be applied? Who will decide any disagreements that may result?
- 8. In the Bureau's view, how many witnesses can a lawyer represent without being a priori conflicted?

In conclusion, you have put us on general notice of a conflict of interest contention. You have further suggested the problem might be resolved later, at some risk. We feel obliged to request the basis for your contention and to address the obstacle immediately.

#### II. THE DIFFICULTIES OF SECRET TRANSCRIPTS

When we meet with our clients to discuss the Bureau's conflict of interest claim, we would like to tell them that the FBI will let each one see what the court reporter has taken down as his statement and let his counsel retain a copy. Thus we ask the FBI

to reconsider its pronouncement to Mr. McGuirk that "copies [of transcripts] will not be provided to you or your client(s) for retention or review." (Page 2) That is a proposal that no lawyer worth his salt could recommend to a client.

#### A. The Pursuit of Equality

Frankly, we do not understand why the Bureau insists upon second-class treatment of our clients. In my July 27, 1995, Memorandum to William E. Perry I stated that in history and practice the FBI has permitted an exact record to be made of interviews by its agents when the witness made accurate recording a condition for granting any interview. (Page 13) Our assertion that the FBI has, upon demand, permitted an exact record to be made of voluntary interviews carries with it the corollary that the witnesses had access to this record. The Bureau has not responded to the main proposition nor to its corollary. But we know, as a fact, that the Bureau has granted this elementary courtesy to United States citizens.

The July 27 Memorandum also asked what is the genuine FBI policy and practice and advised the Bureau that "[e]ach client has to be informed accurately about FBI policy and procedure before he can decide what conditions, if any, to attach." (Page 13-14 & n.2) We are still waiting for an answer. Merely telling us what safeguards you will allow our clients in this matter will not do when you do not declare what you have bestowed on other voluntary

witnesses and do not deny that some have been favored more generously.

#### B. The Search for the Truth

The July 27 Memorandum questioned the necessity for reliance upon "the one-sided and unscientific FBI Form FD-302 (Report of Interview) technique . . . " (Page 1-2) The Bureau has now recognized the desirability of transcripts. But the procedure proposed remains less than scientific.

Employing a court reporter serves the goal of searching for the truth. But the Bureau needs to stick with the rationale of the procedure. The witness and his counsel have to inspect the transcript while their memories are fresh from the interview. This is why stenographic notes of a deposition are typed up promptly and shown to the witness for reading and signing.

Prompt review assures that the content is accurate. That is, this scrutiny is required to assure that the record is complete and verbatim and, most importantly, that the quest for the truth is being served. Here are the issues:

- The court reporter's shorthand or stenographic notes must be a true and correct account of what was said. Did the court reporter get it down right?
- The typist's transcript must be a faithful transcription of the notes.

- The interpreter's translation of an English language question must be reliable. Did the translator capture the thought?
- The interpreter's translation of an answer into English must also be reliable.
- The witness's understanding of what the examiner wants to know must be clear. When an interview is beset by language and cultural differences, there is plenty of room for confusion.
- The witness's response must accurately articulate his knowledge.
- Errors must be corrected.

Experience teaches that these objectives can only be achieved when the parties study the transcript as soon as possible after the interview or deposition. <u>In re Russo</u>, 53 F.R.D. 564, 571-72 (C.D. Cal. 1971).

Parenthetically, your letter states that grand jury transcripts are not provided to the witness or to the witness's counsel for retention or review. (Page 2) This is true, as far as it goes.

The practice has created many problems. So, when a witness moves for production of a transcript of his grand jury testimony, courts are now likely to grant the motion. <u>E.g.</u>, <u>In re Sealed Motion</u>, 880 F.2d 1367 (D.C. Cir. 1989); <u>In re Heimerle</u>, 788 F.

Supp. 700 (E.D.N.Y. 1992). The Memorandum cited this caselaw. (Page 15)

Putting aside the special case of grand jury practice, it is likely that most federal agencies would allow a witness to have a transcript of what he said. Under the Administrative Procedure Act a person compelled to testify before an agency or a representative thereof is entitled to procure a transcript of his testimony "except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. § 555(c). This right to a transcript applies even to purely investigatory proceedings conducted for factfinding purposes. E.g., In re Neil, 209 F. Supp. 76 (D. W.Va. 1962) (IRS investigation; the APA requires the federal agency conducting the inquiry to furnish each witness summonsed with a copy of the transcript of his own testimony; the refusal of a witness to sign the original transcript does not constitute good cause for denying him a copy); see also Mott v. McMahon, 214 F. Supp. 20 (N.D. Cal. 1963) (IRS investigation of tax liability and possible fraud; a witness summonsed to testify cannot be made to depend upon the federal agency for obtaining a transcript; and, specifically, the witness is entitled to have his own court reporter present taking down the proceedings). If witnesses compelled by federal agencies to testify always have a right to inspect the transcript and usually have a right to procure a copy, why should a voluntary witness be treated worse?

To: Paul E. Mallett
Re: Bertin/Baillergeau murder investigation

September 6, 1995 Page 14

#### C. Protection against Defamation

The FBI has overlooked the one-sided nature of the procedure it proposes. Why should a witness's own words be kept a secret from him? How can a client refute false claims about his testimony?

Certain elements of the news media covering Haiti are irresponsible. Mr. McGuirk's July 27, 1995, letter to Deputy Assistant Director Perry pointed out the problem. (Page 2) The accompanying Memorandum spelled out this concern. (Pages 2-3, 8-11, 12)

To illustrate the danger, consider the June 21-28, 1995, issue of the <u>Haiti-Observateur</u>. In an article headlined "The Bertin Affair" the <u>Observateur</u> declared that the FBI report on the investigation had been prepared but not made public yet. The story reported as fact that more than four members of the "Lavalas regime" were involved and the FBI had concluded that the crime is an "official assassination." All of this, of course, is arrant nonsense.

What if the <u>Observateur</u> next reports falsely that one of our clients confessed to the FBI that he assassinated Madame Bertin? Or that he accused some innocent person of doing it? A witness who voluntarily cooperates with law enforcement and gives it the benefit of his statement should be entitled to point to that statement to protect his reputation.

September 6, 1995 To: Paul E. Mallett

Bertin/Baillergeau murder investigation Page 15 Re:

In sum, we ask the FBI to grant a simple courtesy it has extended to witnesses in the United States; to pursue the search for truth to its logical conclusion; and to let each witness have access to his own statement. Granting the services of a court reporter but denying a copy of the transcript seems like another "instance of keeping the word of promise to the ear and breaking it to the hope." United States v. Nugent, 346 U.S. 1, 10, 13 (1953) (Frankfulter, J., dissenting).

#### CONCLUSION

Your August 16, 1995, letter has placed a cloud on counsels' representation of the witnesses. We urge full disclosure by the Bureau so we can remove the cloud or remove counsel.

After this, we can reach the secret transcript issue. If we remain as counsel in the matter, we would like to tell our clients some good news: that the Bureau will not take their statements without giving them a record to rely upon.

We were ready to start the interviews in July when we ran into the Bureau's resistance to transcripts. We will consult with our clients as soon as the agency has responded to the ethics problem and reconsidered its resistance to sharing the transcripts. We await your reply.

Enclosures Hme. Jean-Joseph Exume cc: James McGuirk Jean Baptiste Pierre-Cadet Ira J. Kurzban Burton V. Wides

#### RULE 4-1.7 CONFLICT OF INTEREST; GENERAL RULE

- (a) Representing Adverse Interests. A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless:
- (1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and
  - (2) each client consents after consultation.
- (b) Duty to Avoid Limitation on Independent Professional Judgment. A lawyer shall not repre-sent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless:
- (1) the lawyer reasonably believes the representation will not be adversely affected; and
  - (2) the client consents after consultation.
- (c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken. the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
- (d) Lawyers Related by Blood or Marriage. A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

Loyalty to a client

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the

representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See rule 4-1.16. Where more than I client is involved and the lawyer withdraws because a conflict arises after representation, whether th lawyer may continue to represent any of the clients is determined by rule-4-19. See also rule 4-22(c). As to whether a client-lawyer relationship exists or, having once been established, is continuing, see comment to rule 4-13 and scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client's or another client's interests without the affected client's consent. Subdivision (a) expresses that general rule. Thus, a lawyer ordinarily may not set as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous repre-sentation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Subdivision (a) applies only when the representation of 1 client would be directly adverse to the other and where the lawyer's responsibilities of loyalty and confidentiality of the other client might be compromised.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Subdivision (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

#### Consultation and consent

A client may consent to representation notwithstanding a conflict. However, as indicated in subdivision (a)(1) with respect to representation directly adverse to a client and subdivision (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representa-tion under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than 1 client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and 1 of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

#### Lawyer's interests

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See rules 4-1.1 and 4-1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

#### Conflicts in litigation

Subdivision (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by subdivisions (b) and (c). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise the criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is as grave that ordinarily a lawyer should decline to represent more than 1 co-defendant. On the ther hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of subdivision (b) are met. Compare rule 4–2.2 involving intermediation between clients.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer'a relationship with the enterprise or conduct of the suit and if both clients conserving the continuous consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

#### Interest of person paying for a lawyer's service

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See rule 4-18(D. For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.

#### Other conflict situations

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise, and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for aeveral family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of some jurisdictions. In Florida, the personal representative is the client rather than the estate or the beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is whether the responsibilities of the 2 roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

#### Conflict charged by an opposing party

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See Scope.

#### Family relationships between lawyers

Rule 4-1.7(d) applies to related lawyers who are in different firms. Related lawyers in the same firm are also governed by rules 4-1.9 and 4-1.10. The disqualification stated in rule 4-1.7(d) is personal and is not imputed to members of firms with whom the lawyers are associated.

Comment amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

# MEMORANDUM

TO:

Seth Waxman

CC:

The Honorable James Dobbins

FROM:

Burton V. Wides

DATE:

October 6, 1995

RE:

Cooperation With the FBI in Haiti

I have prepared the enclosed draft memorandum in case it is necessary to respond to a flurry of congressional or news media leaks that I anticipate will occur in the near future — either in connection with the Dole amendment in the Foreign Aid Appropriations Conference Report or as the FBI prepares to complete its investigation and terminate its current Durocher inquiry. (Even if there is an "official" passing of the baton to some new "Haitian-international" mechanism to continue the investigation, it is virtually certain that the "blocked interviews" question will become public.)

If the present draft is inaccurate in any way, please let me know. The bottom line seems pretty clear. If the Bureau thinks that those interviews are an important part of this investigation, then it should permit a transcript and conduct the interviews, rather than report that its inquiry was truncated. As the memo notes, if there is a specific problem here with multiple representation, it ought to be spelled out. But that is a question from transcript access. Assume the attorney for A has already sat in on interviews of B and C. Then he will have the benefit of knowing what the Q & A was in those interviews when he counsels A (either before or during A's interview). Whether or not he also has access to a transcript has little to do with that issue. You and your DOJ and White House colleagues know that. (I assume the NSC has checked with Judge Mikva's office on a legal procedural question like this one.)

I don't know exactly what combination of (1) internal political or bureaucratic dictates; (2) Bureau frustration at the strange investigative conditions in Haiti, generally, and (3) the need to justify a failure to "solve the case" before wrapping np the FBI inquiry, have produced this unnecessary impasse; but this unfortunate situation clearly is not the right outcome on the merits.

This issue is a very narrow one. I realize you and your colleagues feel you have pushed the Bureau as far as you can. Moreover, this is actually an issue between the Bureau and private counsel for the witnesses. Believe it or not, he is advising his clients on the basis of his best independent judgment, and their desires, not the direction of the Haitian government. I can assure you, therefore, that I have not been eager to interject myself. I only do so because I know from experience the tremendous opportunity for malicious mischief that the currently impending outcome will create.

BVW/ice Enclosure



### DRAFT

"DO AS WE SAY, NOT AS WE DO"

## THE REAL RECORD OF HAITI'S COOPERATION WITH THE FBI IN THE DUROCHER-BERTIN CASE

#### **EXECUTIVE SUMMARY:**

Now that the Foreign Aid Appropriations Conference has begun, the Conferees and members of other interested committees may receive communications <u>purporting to describe</u> Haiti's cooperation with the FBI team helping to investigate the murders last March of Mrs. Mireille Durocher-Bertin and Mr. Juneau Baillergeau. Fragmentary information about the level of cooperation has been leaked to the press. You may be told: (1) that several persons whom the FBI seeks to interview, and their private counsel, are "frustrating" the FBI's investigation; and (2) that the Government of Haiti should pressure them to stop "stonewalling". That formulation is tempting, simplistic and dead wrong. Before unwittingly buying into the clever campaign of those whose real agenda is to fan flames of distrust between the U.S. and Haiti, American policy makers should take the time to view the matter in proper perspective.

In fact, a series of procedural issues between private counsel for the prospective interviewees and the FBI has been resolved, with one very narrow exception -- whether witnesses can correct transcripts of their interviews. The briefest consideration of the current impasse makes clear that it is not the counsel for the Haitian interviewees who has been responsible for the delay.

As for the Government of Haiti ("GOH"), it actually has bent over backwards to be cooperative in this high profile case. Haiti actually has accommodated the FBI's preferences to a remarkable extent for a sovereign government accepting an offer of "assistance to its Ministry of Justice". Moreover, it would not be appropriate for the GOH to pressure the attorney for prospective interviewees to ignore his professional responsibility regarding his clients' interests for the sake of expediency. That would be just as inappropriate as asking the U.S. Attorney General or President Clinton to pressure a private attorney here to abandon his best judgment about a reasonable procedural request on behalf of his American client.

In addition, the procedural options requested by counsel for the prospective interviewees have been reasonable -- as judged by U.S. standards. At each juncture, the FBI's initial position has been that they simply are following their U.S. practice, i.e., that they do not conduct interviews under the particular format sought by the private counsel in this matter. It was pointed out each time, however, that such procedures are often agreed to when requested by American investigative targets, let alone witnesses, whom the FBI wants to interview in the U.S. Then the FBI eventually agreed to that particular requested element of the format. This has been the repeated pattern -- except for the last step now in dispute. The remaining issue is very limited; but it apparently threatens the FBI's willingness to continue its investigation. Having agreed to a full transcript of the interview, the FBI has balked at permitting the interviewee to review his own transcript, so that it might be promptly corrected while memories of the questions and answers are still fresh. Yet such transcript review is both customary and clearly essential. Otherwise, the potential is just too great for harmful leaks and unwarranted policy assumptions, based on misunderstandings, inaccuracies or incomplete summaries. This is especially true given the complexities of any such cross-cultural investigation and the intense political maneuverings in which this criminal case

is now enmeshed. The media coverage and Washington debate about this case already have amply demonstrated that danger.

Of course, in the U.S., the witnesses could simply refuse to be interviewed altogether unless their procedural requests were honored. In the current situation, however, the Haitian subjects have indicated that they want to be interviewed, so that they can clear the air, provided there are appropriate safeguards.

Counsel for the interviewees asked the FBI months ago for an explanation of its actual FBI procedures in similar situations in the U.S., as well as a specification of any actual "conflict of interest" that the FBI has vaguely suggested might arise from his representation of multiple clients (also a common, accepted practice in the U.S.). The FBI has not yet responded. It may be that the FBI team in Haiti is simply looking for a reason to end an understandably frustrating and difficult assignment under taxing conditions—one that might have been less frustrating and less difficult had there been a more collaborative effort with the GOH's inquiry. If the FBI believes that these interviews are important to their inquiry, then there is no good reason why they cannot proceed. That would both make the FBI's inquiry more complete and also avoid any unfair accusation of a "cover-up".

Otherwise, the terrible irony will be this: the U.S. Government has provided thousands of dollars to assist the Haitian Government's improvement of its criminal justice system and establishment of the rule of law, and has sent scores of judges, prosecutors, defense attorneys and police officers to Haition advise Haitians on appropriate criminal justice procedures, including the full protection of the rights of citizens subject to investigation by the State. Then the U.S. turns around and now would tell the government and people of Haiti:

"Do what we say, not what we do. The procedural rights afforded citizens in America by our preeminent police force will not be applied in Haiti because the FBI feels that it might theoretically make the job a bit harder."

Understandably, every law enforcement investigator would prefer to question citizens without any annoying complications, such as an attorney being present or a complete, accurate record being kept. But in the U.S., expediency has never been the sole determinant of criminal justice procedure. No matter how urgently both governments seek to resolve this and other heinous crimes, we should not press the Haitians to make expediency the sole determinant for them, in the same breath that we ask them to learn and respect our safeguards of civil liberty.

This memorandum provides the full background explanation and the actual facts which Members of Congress and the media must have in order to accurately understand the issues and appraise unfair criticism of Haiti's cooperation with the FBI. But first, it is important at the outset to make clear that the government and the people of Haiti are extremely grateful for the dedicated efforts of the individual FBI Special Agents and Supervisory Agents, who have labored under adverse conditions in a foreign country and in what, at times, has doubtless been a perplexing foreign cultural setting.

<u>POINT #1:</u> In the Durocher-Bertin investigation, it is the FBI and U.S. policy officials who have not seen fit to cooperate with the Government of Haiti.

Last March, President Aristide accepted an offer from President Clinton and Attorney General Reno to have the FBI assist in the inquiry into these murders that the Haitian police and Ministry of Justice had already commenced. As U.S. Ambassador William Swing recently acknowledged in correspondence with the GOH, the U.S. offered the FBI's assistance to help the Haitian Ministry of Justice investigate these murders. Once the FBI team arrived in Haiti, however, the U.S. promptly decided to refuse to provide any substantive assistance to the Ministry of Justice and its investigation. Instead, the FBI team in effect constituted itself as an "independent special prosecutor" operation, conducting a wholly separate investigation in secret and declining to work jointly or cooperate with the GOH's inquiry. This was completely contrary to the basis upon which the GOH had accepted the offer of FBI assistance. In any event, the question of when a criminal inquiry should be conducted completely independent of the Ministry of Justice and police is clearly a matter to be decided by the sovereign government whose criminal laws have been violated. \*\*

Nevertheless, the GOH bent over backwards to accommodate the FBI effort and agreed to let their investigation go forward on a secret, independent basis, concealed from the host government they were sent to assist. Not even the autopsy reports and ballistics analysis were shared with the Ministry of Justice.

As a practical matter, the FBI has provided virtually no information to the GOH, except for one or two innocuous briefings, e.g., a video of the crime scene. Thus, there has been scant opportunity for the GOH and its investigators to provide the FBI team with helpful guidance in regard to leads that might be pursued and, equally important, a "reality check" with regard to erroneous or incomplete information that the FBI team receives from sources eager to smear the Aristide government or to divert attention from their own culpability.

The ostensible justification for this bizarre approach to "assisting the Ministry of Justice" -- in a foreign country where the U.S. Justice Department has no criminal jurisdiction -- was this: there had been allegations of a plot to murder Madame Durocher-Bertin that supposedly involved officials in the Aristide government. The FBI expressed concern that the integrity of its investigation would be compromised, therefore, if it shared any significant information with the GOH.

But the GOH was equally concerned that the inquiry retain the benefits of combining synergistic efforts of the Haiti investigators and the FBI team. In particular, the GOH investigators could provide information that would permit the FBI to properly assess the credibility and potential motivation of sources from which it obtained information -- either directly from the source, or via other U.S. Government agencies who may pass on such information from U.S. intelligence files.<sup>27</sup>

The sovereign U.S. Government has decided by statute the general framework for moking such decisions in the U.S. That framework must then be applied in particular cases by the Attorney General to determine, for example, whether there should be a fully independent counsel investigation, or merelpa "special counsel" reporting to the Attorney General. Imagine how the U.S. Congress or the White House would reset if a team from Scotland Yard or the Royal Canadian Mounted Police came to the U.S. to assist a Justice Department investigation, and then unliaterally decided that they would operate as an "independent prosecutor"-type investigating team and share none of the results of their investigation with the Department of Justice.

The number of instances in which U.S. intelligence "sources" providing false or largely inaccurate information entited of President Aristide and his colleagues have turned out to be former Haitian army officials, paramilitary lenders, and their political co-conspirators, are too numerous to recount here. Many of those "sources" were responsible for countless morders, fortures, terror raping, narcotics traffic into U.S. etiles, or other major crimes and human rights abuses. They helped overthrow President Aristide and then bitterly fought his return.

(continued...)

In addition, the GOH could suggest categories of information that the FBI might not have fully received from the official sources on which they are relying, because U.S. agencies are concerned about political embarrassment if Haitians who have been on their payroll might then become suspects in a murder investigation. They could only effectively do so in direct and mutually cooperative consultation mutually with the FBI team. Therefore, the GOH has offered to set up special secure channels for consultation and exchanging information, but this was rejected by the FBI. In marked contrast, the investigators for the GOH have repeatedly sought to provide the FBI team with leads, names of persons who should be interviewed, and specific information relevant to solving the murders.

<u>POINT #2</u>: The GOH has <u>not obstructed</u> the FBI's attempts to interview persons believed to have relevant information about the case.

When the FBI initially sought to interview members of the Haitian Cabinet and lower level officials, the GOrs indicated its desire to have members of its own inquiry also sit in on those interviews.

Whatever accurate information they may have provided about political maneuvering within Haiti's military or then-ruling elite, they had more than ample incentive to lie about alleged murders by the Aristide government. Two notorious examples are:

- the standerous briefing about President Aristide, that was significantly based on information from persons who had overthrown his legitimate government or have tried to have him killed, which the Congress received from the CIA in the fall of 1993, and 1993 and
- the CIA's longstanding employment of the head of FRAPH after urging and aiding him to establish FRAPH's
  predecessor right after the 1991 coup. (FRAPH is the paramilitary organization perhaps most responsible for the brutal
  nutriders and tortures that President Chinton cited in the summer of 1994 as a principal justification for reinporary U.S.
  military involvement in Haiti.)

This is only the tip of an iceberg that some knowledgeable observers have claimed dwarfs the recent CIA "Guatemala scandal". I can provide additional information to appropriate congressional committees if they wish to pursue oversight in those matters.

- For example, when Ambussador William Swing and General Meade (U.S.A. Commander of the MNF) pressed President Aristide to retain Claude Duperval (General Cedras' former deputy) as acting Commander-to-Chief of the Hairian army, they apparently had not been informed by U.S. intelligence that Duperval:
  - as Chief of Police during the 1990 elections, had refused to executive warrants for the arrest of the head of the dreaded Tonton Macoures who had illegally returned to Haiti;
  - had been the key military conspirator in the abortive coup that almost prevented President Aristide's inauguration in 1991; and
  - was on the Justice Department list of high level Haidan officials whom it sought to indict. This list was circulated to U.S. intelligence agencies to see whether those agencies would be embarrassed by such prosecutions.

The most recent disturbing incident involves Marcele Morrisaint, who has been formally charged by the GOH with being the goaman in the 1993 brutal staying of Hairi's Minister of Justice, Guy Mallory. (Wallory previously had been a preminent Port-su-Prince corporate anomey, who frequently represented U.S. government genetics in general legal masters.) Morrisaint was admittedly on the U.S. payroll. With the murder charge against him still pending, Morrisaint was released from jail. He cannot be found and appears to have left. This was accomplished unbeknownst to the current Minister of Justice or his investigators in the Mallory murder, and, according to news reports, with the clandestine assistance of U.S. officials.

There have already been several instances in which it became clear that the FBI was acting on information it thought was very probative of certain individuals. Tikely involvement in the murders. There was additional information with which the FBI had not been supplied by the other U.S. Government agencies and which dramatically reduced the probative value of the material on which the FBI was proceeding. A participant in the GOH's ongoing inquiry into the murders fortuitously learned of this "evidence" that the FBI was evaluating totally out of context and, at least in that instance, was able to provide the additional corrective information.

<sup>≥(...</sup>continued)

Once again, the Bureau demurred and said its practice was only to interview persons alone, or not at all. The GOH pointed out that, in fact, the FBI often allows attorneys in the U.S. to sit in on interviews of their clients, when the client insists upon it and the FBI is interested in conducting the interview. The issue was temporarily put aside, while the FBI interviewed other witnesses, examined the crime scene, performed forensic analysis, etc.

The FBI subsequently notified the GOH of its intent to interview some 15 persons who, for the most part, were (or recently had been) senior police and Palace officials. Once again, the FBI objected to having any attorney representing the GOH sit in on these interviews, claiming this would "compromise" its inquiry. The GOH pointed out that numerous U.S. federal officials had been interviewed by the FBI, or by Independent Counsel prosecutors, in the presence of both their personal attorney and a government attorney from the interviewee's office or agency. Nonetheless, the GOH acceded to the FBI's request that only private attorneys for the subject be present.

This issue was resolved amicably at the beginning of the summer, in a meeting with President Aristide of senior officials from the FBI, the State and Justice Departments and the U.S. Ambassador. At that meeting, the U.S. officials participating, including senior representatives of the FBI and the Department of Justice, agreed that it would be appropriate for the interview subjects to have private defense attorneys who could sit in on the interviews if their clients wished -- as the FBI often permits in the U.S. -- so long as no attorney representing the GOH itself participated in the interview.

President Aristide also explained the Government's policy that GOH employees should have legal representation when questioned by law enforcement officers, if they desire it, and that the GOH would pay for such outside counsel. Again, the U.S. representatives, including the senior FBI official, agreed that the interviews could go forward on that basis.

At that meeting, the GOH agreed to still another procedural request by the U.S. delegation on behalf of the FBI. The FBI had notified to the GOH of 15 prospective interviewees. At the meeting in the Palace, it was agreed that, beyond those 15 persons, the FBI could privately approach any government official or employee for an interview, e.g., at their residence, without notifying the GOH, as long as the FBI fully apprised them (1) of their right to have counsel; and (2) that the GOH was prepared to arrange and pay for competent counsel if the prospective interviewee so desired.

<u>POINT #3</u>: The GOH provided the proposed interviewees an opportunity to retain counsel appropriately experienced to represent their interests in this matter.

The persons that the FBI seeks to interview have retained a U.S. attorney to represent them who is a highly reputable, former prosecutor and someone sufficiently familiar with complex criminal investigations and FBI investigating policy to adequately outline the issues and options for his clients. That is precisely what one would expect any attorney in the U.S. competent for this assignment to do as part of his or her professional and ethical obligations.

While the GOH is paying any legal bills of these interviewees, the GOH has made crystal clear to the retained private counsel that his sole professional obligation is to the individuals whom he represents. The GOH has not sought in any way to dictate the advice that he provides to his clients. The counsel, in turn, has indicated explicitly to the FBI and to the GOH that he takes extremely seriously his professional responsibility to represent his clients' individual interests.

It is, of course, quite common for a single attorney to represent multiple persons in U.S. criminal investigations, especially when they are employees of a common employer and are merely persons whom the police want to interview as possible witnesses with relevant information. It is also quite common in the U.S. for a company that is the employer of such multiple witnesses to pay for their legal expenses. Presumably, the U.S. would not seek to deny these Haitians the same adequate legal representation, to which they would customarily have recourse in the United States, merely because of the common concern shared by the U.S. and the GOH to solve this murder case, along with others, as promptly as possible.

It should be emphasized that the remaining procedural issues discussed below are matters that are being negotiated between the FB1 and counsel for the prospective interviewees -- not the GOH.

POINT #4: A subsequent series of procedural issues between private counsel for the prospective interviewees and the FBI has been resolved, with one very narrow exception. The briefest consideration of this series of issues -- and the current impasse -- makes clear that it is not the counsel for the Haitian interviewees who has been responsible for the delay.

After counsel reviewed the matter and conferred with his clients -- over an extremely brief period, compared to customary practice in the U.S. -- he asked on their behalf whether the FBI would agree to a full transcript being made of each interview. To his surprise, the FBI declined, insisting that it would suffice to have the so-called "302" interview reports that Bureau agents write up after the interview. The FBI team in Haiti claimed that it was not its practice to permit a transcription or recording to be made of interviews. Since this position, in fact, did contrast sharply with normal FBI practice in the U.S., the counsel appealed that refusal through several levels of the FBI management. His detailed memorandum noted that the creation of a transcript is not in violation of any known FBI rules or regulations. Eventually, the FBI agreed to have the interviews transcribed. But resolving this simple issue took several months and further delayed the investigation. (Although the issue was eventually resolved, given the substantial delay it caused, the reasonableness of the request for a transcript, rather than relying on FBI 302 reports in case the contents of an interview is disputed, is detailed at Tab A.)

Now that there is agreement to transcribe the interviews, the pending issue is whether the interviewees will be given prompt access to the transcripts of their own interviews in order to be able to point out any errors or omissions. The private counsel's August memorandum submitted to the FBI also pointed out that, when a U.S. citizen makes it a condition of being interviewed, the FBI not only commonly permits a transcript of the interview, but also permits prompt access to the transcript by the interviewee and his counsel, for purposes of study and correction where necessary. Indeed, the normal practice is for the court reporter to provide a copy of the transcript directly to each party to the proceeding, i.e., a copy to the FBI, and a separate copy to the counsel for the person interviewed.

It should be noted that the FBI has indicated that these prospective interviewees, at this point, are not subjects of an investigation, let alone "targets" of a criminal investigation, but are merely interviewees. It also should be noted that normally, decisions on the conditions to be granted persons that investigators wish to question would be made by a prosecutor, not the law enforcement agents, themselves. In this situation, however, the FBI, in effect, is acting in Haiti not only as a freewheeling, unaccountable police investigation force, but also as an independent special prosecutor without any appropriate decisions in that regard having been taken by the GOH.

In his August communication to the FBI, counsel for the interviewees asked what the genuine FBI policy and practice in the U.S. has been when prospective interviewees ask to review for a copy of a transcription. This request was made so that his Haitian clients could be accurately informed about how the FBI treats such requests in the U.S. and could then decide what conditions, if any, they wish to attach to granting an interview. The FBI has not responded to these pertinent inquiries, which are now almost two months old. (The importance of access to correct the transcript is detailed further at Tab B.)

<u>POINT #5:</u> The FBI's effort to cloud the interview procedure issues with veiled suggestion of improper multiple representation is without merit and offensive.

Still hovering in the background, at this point, is the FBI's vague suggestion that, because the private counsel is representing more than one of the interviewees, he could be laboring under a conflict of interest, which the FBI would not specify until some future point. The FBI response is confusingly worded: "[The FBI] cannot concur a priori that you could ethically represent all 15 individuals." (FBI letter of August 15 to counsel.) It is unclear whether the FBt is saying that:

- (1) counsel cannot ethically represent all clien's simply because there <u>conceivably might</u> develop a potential conflict of interest;
- (2) counsel cannot do so in this case as to particular pairs of clients because the FBI is aware of facts indicating an actual conflict of interest;
- (3) the law <u>presumes</u> there is an unreconcilable conflict of interest <u>whenever</u> more than one witness chooses to be represented by the same lawyer; or
- (4) the FBI simply would prefer not to have the same attorney because it would make it easier for them to obtain statements by particular classic police interrogation stratagems, such as suggesting the interviewee had been accused of wrongdoing by another interviewee when, in fact, that is not the case.

Given the FBI's veiled threat that counsel may be acting unethically because he represents more than one party, the conscientious attorney is now required to (1) inform his clients of the FBI's concerns: (2) to meet with the clients again to discuss their desire for representation; and (3) to revisit the choice of counsel questions.

The canons, codes and rules of ethics in virtually every American jurisdiction allow multiple representation in both civil and criminal matters. In Florida, where the private counsel practice, the state rule permitting it is based on the ABA Model Rules of Professional Conduct. It is not at all unusual for one attorney to represent many clients in the same investigation. This is especially true if they are only witnesses and have not been informed that they are targets. Lawyers, of course, must be alert and careful that no client's interest is sacrificed or impaired by this multiple representation. They are bound by that obligation. If they violate it, they can be sanctioned. Federal courts of appeals repeatedly have refused to curtail simultaneous representation of multiple clients. This has even been true when the clients were principal targets of a grand jury investigation, had pleaded the Fifth Amendment or had been immunized. Moreover, multiple representation also has been upheld, even where fees for the attorney's representation of multiple clients were being paid by their common employer. (Also see Tab C.)

3 9999 05983 833 2

- 8 -

POINT #6: These are the only pending procedural issues.

If it is suggested that the lawyer for the persons to be interviewed has demanded that the FBI supply the proposed questions in advance, that is not true. The possibility of reviewing those questions was raised early on, in terms of their intelligibility to the persons being interviewed, but the matter was dropped. It has not been mentioned again by counsel for the witnesses, nor is it in the FBI letter to counsel or in their response of July 27 to Deputy Assistant FBI Director William Perry.

#### CONCLUSION

In summary, although an FBI representative this summer claimed in their July letter to counsel that they were insisting on certain procedures "because we are following U.S. investigative practice . . . ", that claim was simply inaccurate. What does the Congress want to say about this situation to Haiti and the world? Does Congress really want to tell Haiti:

"Do what we do in our own country for our own citizens -- except when the U.S. provides law enforcement investigators to assist you, criminal justice system. Then do what we say, but <u>not</u> what we do. Haitians should accept a second class system of justice and receive less protection than U.S. citizens."

That is not an appealing message.

Burton V. Wides . September 28, 1995

We represent the Government of Haiti and are registered under the Foreign Agents Registration Act at the Department of Justice, where our registration is on file.





ISBN 0-16-052562-4





3